

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\* \* \* \* \*

UNITED STATES OF AMERICA

vs.

TODD CARTA

CIVIL ACTION  
No. 07-12064-JLT

\* \* \* \* \*

BEFORE THE HONORABLE JOSEPH L. TAURO  
UNITED STATES DISTRICT JUDGE

**DAY ONE**  
**NONJURY TRIAL**

**A P P E A R A N C E S**

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Courtroom No. 22  
John J. Moakley Courthouse  
1 Courthouse Way  
Boston, Massachusetts 02210  
February 9, 2009  
10:30 a.m.

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P R O C E E D I N G S

**THE CLERK:** Civil Action No. 07-12064, United States of America versus Todd Carta.

Counsel please identify themselves for the record.

**MS. BOAL:** Good morning, Your Honor. Assistant United States Attorneys Jennifer Boal and Eve Piemonte Stacey.

**MR. GOLD:** Good morning, Your Honor. Ian Gold and Page Kelley of the Federal Defender Office for Mr. Carta.

**THE COURT:** Okay. Good morning. The defendant is here. The respondent is ready to go?

**MS. BOAL:** Yes, we are.

**THE COURT:** Okay. I have one motion in limine left that I haven't handled and this is the government's motion in limine to exclude the age of consent chart.

I think what I am going to do is just deny it without prejudice to your raising an objection when we reach the point that the chart is offered. It is a little confusing to have the different dates but I am sure that the evidence is going to somehow rationalize those discrepancies in dates.

I mean, the statute we are dealing with here talks about 18, right, 18 as being the triggering date for the offense?

**MS. BOAL:** The 18 age is contained in BOP

1 regulations.

2 **THE COURT:** Yes, but in Massachusetts, as I  
3 understand it, the age of consent is sixteen; is that right?

4 **MR. GOLD:** Your Honor, a lot of the subject matter  
5 of this case takes place in Connecticut where it is sixteen,  
6 the age of consent.

7 But we may not need to do it or when the time  
8 comes, the purpose of the age of consent is actually part of  
9 the attack on the diagnosis in the case. That the diagnosis  
10 depends or appears to or may depend on these arbitrary  
11 differences in age of consent --

12 **THE COURT:** Okay.

13 **MR. GOLD:** -- on this.

14 **THE COURT:** All right. I am going to deny it  
15 without prejudice, all right.

16 **MS. BOAL:** Yes. And, Your Honor, just one  
17 clarification.

18 The Court had permitted Dr. Bard to sit through the  
19 testimony. We would ask -- and my understanding is  
20 respondent's counsel agrees -- that Dr. Phenix be permitted  
21 to sit through the testimony. I think there is an open  
22 question of whether -- I don't know what you guys believe  
23 about the opening arguments or not, whether anyone should be  
24 in the courtroom other than the attorneys.

25 **THE COURT:** Well, what is the story? How do you

1 feel about it?

2 **MS. KELLEY:** We don't object to the witnesses being  
3 here for the openings.

4 **THE COURT:** I will let everybody stay.

5 **MS. BOAL:** Okay.

6 **THE COURT:** It is just more information.

7 **MS. BOAL:** Okay. And that would include -- the  
8 government does have a fact witness, Dr. Wood, as well. I  
9 don't -- do you have --

10 **THE COURT:** Any objection to that?

11 **MS. KELLEY:** We have no objection to his being  
12 here. We do want to be clear that Mr. Wood is not an expert  
13 and we want to be careful to limit his testimony. He hasn't  
14 been -- we haven't received discovery as we would have for  
15 an expert. We didn't have a chance to depose him --

16 **THE COURT:** Well, that is a different issue than  
17 whether or not he sits in the courtroom.

18 **MS. KELLEY:** Right. But just as an aside we do  
19 have that issue as to his testimony.

20 **THE COURT:** Well, then you raise the objections at  
21 the appropriate time.

22 **MS. BOAL:** And, Your Honor, just one clarification  
23 with respect to Dr. Bard. We understand that you allowed  
24 the motion to have him sit through the testimony.

25 I wasn't clear if you had also allowed him to

1 assist respondent's counsel in the preparation of their  
2 cross-examination.

3 **THE COURT:** Yes, that is what he is here for.

4 **MS. BOAL:** Okay. Then we would ask that he not be  
5 referred to as a court or independent examiner if he is  
6 actually providing that type of assistance to the  
7 respondent.

8 **THE COURT:** Well, you are only trying the case  
9 before me.

10 **MS. BOAL:** Yes.

11 **THE COURT:** You are not going to be prejudiced as  
12 far as any jury is concerned. I know who he is and where he  
13 came from so I don't think we have to worry too much about  
14 that.

15 **MS. BOAL:** And, Your Honor, also just, is it the  
16 Court's practice to formally qualify someone as an expert  
17 during the voir dire or just to -- I know some courts do not  
18 require that in this jurisdiction.

19 **THE COURT:** What I do is when you reach a point  
20 where you ask a question that calls for an opinion, if there  
21 is an objection to the question, I will rule as to whether  
22 or not I think he is qualified to answer.

23 **MS. BOAL:** Thank you.

24 **THE COURT:** You don't have to reach a point and  
25 then submit him as being qualified.

1           **MS. BOAL:** Thank you, Your Honor.

2           **THE COURT:** Okay. Are we ready to start? Do you  
3 want to make an opening?

4           **MS. BOAL:** Yes, Your Honor. And with your  
5 permission, I'll just do it back from the table here  
6 (indicating).

7           **THE COURT:** Any place you want.

8                           **OPENING STATEMENT BY MS. BOAL**

9           **MS. BOAL:** Okay. Your Honor, Todd Carta is a  
10 dangerous man. The evidence will show that he has preyed on  
11 young children since he himself was a child. He has engaged  
12 in a pervasive pattern of seeking out persons who are  
13 increasingly younger than himself, preying on them, grooming  
14 them and molesting them continuously over many decades until  
15 his federal conviction on child pornography offenses when he  
16 was in his forties.

17           The evidence will show that he began this pattern  
18 when he was eleven to thirteen when he molested and  
19 performed fellatio on a child in diapers.

20           He continued throughout his life into his forties  
21 when he had a lengthy relationship with a 17-year old. When  
22 he and the 17-year old had a dispute, he placed flyers  
23 regarding the 17-year old's sexual habits in mailboxes.  
24 Then he lured and preyed on the 17-year old's 13- and  
25 15-year old brothers. He supplied them with marijuana and



1 alcohol and molested the 15-year old.

2 Since he has been an adult he has admitted to a  
3 dozen victims under the age of 18. He has never been  
4 convicted of any hands-on sex offenses, which is important  
5 in that there was no deterrence for this man for over thirty  
6 years. For thirty years he molested children and never  
7 completed treatment or took any other steps to stop this  
8 behavior. It is ingrained.

9 So when he finally attended sex offender treatment  
10 at the Bureau of Prisons facility at Butner, North Carolina,  
11 he couldn't handle it. It was too difficult for him.

12 He spent time with the younger inmates in the  
13 program, some as young as nineteen, and engaged in some of  
14 the behavior as he had previously with children that he  
15 molested.

16 Dr. Wood, his treatment provider at Butner, will  
17 testify today and he will testify that he was told to stay  
18 away, Mr. Carta was told to stay away from the younger  
19 inmates during sex offender treatment and he could not. So  
20 he quit.

21 His failure to complete treatment caused his risk  
22 of reoffense to go up. The evidence will show that someone  
23 who drops out of treatment is at greater risk to reoffend in  
24 another act of child molestation or sexually violent  
25 conduct.

1           So what does the government have to prove by clear  
2           and convincing evidence? Three elements. Whether Carta has  
3           engaged in or attempted to engage in sexually violent  
4           conduct or child molestation. You will hear through Carta's  
5           own admissions and expert testimony that Carta has engaged  
6           in both sexually violent conduct and child molestation.

7           The evidence will show that Carta has admitted to  
8           at least seven victims. Indeed, Carta's trial counsel has  
9           conceded in their brief to, quote, a dozen illegal sexual  
10          encounters, end quote, with children.

11          For example, when Carta was 30 to 31 he began a  
12          long-term sexual relationship with a boy who was 13. When  
13          he was 39 he began chatting online with a 13-year old boy  
14          whom he later met and then molested on a number of  
15          occasions.

16          When he was in his forties, as I mentioned  
17          previously, he had a sexual contact with the 15-year old  
18          brother of his 17-year old lover. After providing the kids  
19          with drugs and marijuana.

20          When he was 15 he attempted to talk a similarly  
21          aged boy into performing fellatio. When the boy refused,  
22          Carta shot him with a BB gun and Carta reports that the boy  
23          then voluntarily complied with Carta's sexual advances after  
24          that.

25          All of this evidence and more will show that

1 Mr. Carta attempted to engage in and did engage in sexually  
2 violent conduct and child molestation.

3 For the second element the government must show  
4 that Mr. Carta suffers from serious mental abnormality,  
5 illness or disorder.

6 Dr. Phenix, a leader in the field of sex offender  
7 evaluation with twenty years experience, will testify that  
8 Mr. Carta meets this criteria.

9 First she has diagnosed him with paraphilia NOS --  
10 and the NOS stands for "not otherwise specified" -- a  
11 diagnosis found in the DSM-IV.

12 A paraphilia is a recurrent, intense sexually  
13 arousing fantasy, sexual urge or behavior involving children  
14 or other non-consenting persons over a period of at least  
15 six months.

16 As to the recurrent, intense sexual fantasies, the  
17 evidence will show that as an adult Mr. Carta's preferred  
18 age range for sex includes children as young as 13. The  
19 evidence will show that this recurrent, intense sexual  
20 arousal has led him to act illegally by having sexual  
21 contact, in some cases repeatedly, and over a year long  
22 period of time with children.

23 The evidence will show that this recurrent, intense  
24 sexual arousal led him to engage in deviant contact with  
25 children.

1           The evidence will show that this recurrent intense  
2 sexual arousal led Mr. Carta to collect at his peak 50,000  
3 child pornography images and to carefully organize them and  
4 categorize them. His actions involved children and they  
5 certainly last longer than a period of six months, in fact,  
6 decades.

7           The Court will undoubtedly hear a discussion about  
8 the term "hebephilia" which refers to an erotic preference  
9 for pubescent children as a mental disorder.

10          The testimony will show that while not everyone in  
11 the field agrees with the diagnosis, it is widely accepted  
12 in the field and has been used by many courts as a basis for  
13 civil commitment of a sexually dangerous person.

14          It is also important to remember that Dr. Phenix  
15 did not diagnose him with hebephilia but with paraphilia NOS  
16 which is a listed diagnosis in the DSM-IV.

17          Dr. Phenix also diagnosed Mr. Carta with a variety  
18 of substance abuse disorders. And she will testify that the  
19 use of such substances acts as a disinhibitor for Carta's  
20 sexual tendencies and increases the risk that he will  
21 reoffend against children.

22          Finally, Dr. Phenix diagnosed Carta with another  
23 serious mental illness, abnormality or disorder --

24           **THE COURT:** Excuse me one second.

25           (Whereupon, the Court and the Clerk conferred.)

1           **THE COURT:** Go ahead. Thank you.

2           **MS. BOAL:** Dr. Phenix diagnosed Carta with another  
3 serious mental illness, abnormality or disorder, namely,  
4 personality disorder with antisocial and borderline  
5 personality traits. She will testify that this condition  
6 contributes to his likelihood to reoffend against children.

7           Finally the government must prove that as a result  
8 of his serious mental illness, abnormality or disorder  
9 Mr. Carta will have serious difficulty refraining from  
10 sexually violent conduct and/or child molestation if  
11 released.

12           Dr. Phenix will testify that Mr. Carta is at a high  
13 risk to reoffend. The evidence will show Mr. Carta's  
14 condition has in the past caused him serious difficulty  
15 refraining and will do so in the future.

16           As I mentioned, at its peek Mr. Carta collected  
17 50,000 images of children. And at his peek he spent 70  
18 hours a week looking at the images and in the process missed  
19 work and didn't shower because his obsession was so  
20 overwhelming.

21           While he was collecting pornography he was also  
22 molesting children. He would groom them or offer them drugs  
23 or alcohol and engage in fellatio with them. There will  
24 also be evidence about actuarial instruments. These are  
25 instruments that attempt to objectify risk assessment by

1 concentrating on static or unchanging factors.

2 In this case one of the few things that the experts  
3 agree on is the methodology. Both of them used two of the  
4 same actuarial instruments. They're called the Static-99  
5 and the MnSOST-R. And that's M-N-S-O-S-T dash R.

6 And with respect to the Static-99, it came out with  
7 remarkably similar scores. Dr. Bard came out with a score  
8 of five. That means Mr. Carta's score matched his scores  
9 for a group of other sex offenders who have scored in the  
10 moderate to high range for reconviction or arrest, rearrest.

11 And Dr. Phenix came out with a six. That means  
12 that Mr. Carta's score matches other sex offenders who have  
13 scored in the high range for reconviction or rearrest.

14 And you will hear that these scores are linked to  
15 percentages of reconviction or rearrest rates for five and  
16 ten years.

17 It's important to remember about the actuarials  
18 that they underestimate the risk because they focus on  
19 rearrest or reconviction. And as we know from Mr. Carta's  
20 case alone, sex crimes are underreported.

21 Each expert also considered dynamic factors. And  
22 those factors are things that can change. One of those  
23 factors that you will hear about is treatment. Mr. Carta  
24 participated in a treatment program for approximately seven  
25 months at FMC Butner in North Carolina. He was in a

1 controlled environment. He was living there. There were no  
2 young teenagers to distract him. But he dropped out and he  
3 couldn't handle it. He was hanging around with the younger  
4 inmates. He was told to stop and he could not. His  
5 condition prevented him from receiving the treatment that he  
6 needed.

7 The research shows that a failure to complete  
8 treatment increases an individual's risk to reoffend.

9 For all these reasons the evidence will show that  
10 Mr. Carta will have serious difficulty in refraining from  
11 either sexually violent conduct or child molestation. And  
12 the government respectfully requests that the Court after  
13 hearing all the evidence enters judgment consistent with the  
14 evidence that Mr. Carta is a sexually dangerous person.

15 **THE COURT:** Okay. Do you want to make an opening  
16 now?

17 **MR. GOLD:** Yes, Your Honor.

18 **THE COURT:** Go ahead.

19 **OPENING STATEMENT BY MR. GOLD**

20 **MR. GOLD:** Your Honor, I wanted to start by --

21 **THE COURT:** You can use the lecturn if you want.  
22 Whatever makes you comfortable.

23 **MR. GOLD:** Thanks. I'm happy here.

24 **THE COURT:** Okay.

25 **MR. GOLD:** I wanted to start just by giving a bit

1 of background.

2 I am recently with the Federal Defender Office.  
3 Before this I worked for two years at the Committee For  
4 Public Counsel Services Unit dedicated to doing these  
5 sexually dangerous persons cases in Massachusetts. And it  
6 was a very intense two years I can tell you but it gave me a  
7 little bit of expertise in the area, at least familiarity  
8 with it.

9 And the reason I bring that up is the idea of a  
10 prototype. My sense of this case when I look at it is that  
11 Mr. Carta, Todd Carta, doesn't meet the prototype for a  
12 sexually dangerous person. The type of person who is  
13 typically -- this doesn't necessarily mean that he shouldn't  
14 be committed in a particular case but that not the type of  
15 person that we tend to see, which are pedophiles, people who  
16 interfere with prepubescent kids and violent rapists.

17 He is someone, and I think the evidence will show  
18 this, his pattern of behavior is to engage in sexual  
19 contacts with minors as young as 13 who are interested in  
20 sexual contact with an adult. It's not healthy behavior and  
21 no one is arguing that it is. But it's not the same type of  
22 pathological behavior that we see in people who do other  
23 types of sex crimes.

24 Now, what I learned in the time that I worked in  
25 this area is that it's a very divided and divisive area in



1 both the science and the law. And we outline some of these  
2 issues in the brief that we submitted to the Court before  
3 today. But what I found is that the experts in the area  
4 tend to break into different sides because there are a lot  
5 of value judgments implicit in the very activity of going  
6 about determining whether someone is sexually dangerous.

7 Dr. Bard is the person we proposed as an examiner  
8 in this case. And very briefly about Dr. Bard, he is  
9 someone who has worked in this career from the or has made  
10 his career in this area from the very beginning at the  
11 Massachusetts Treatment Center which is sort of a center of  
12 research in this area. A lot of the research that's been  
13 done about sex offender recidivism and things along those  
14 lines has been done there because this Massachusetts  
15 Treatment Center has been around for so long. And he's got  
16 experience doing first-hand research with these people and  
17 then are, or these men who are committed there and also  
18 treating them.

19 He worked as a qualified examiner. He was one of  
20 the people who worked for the Department of Mental Health,  
21 later the Department of Correction, doing these type of  
22 evaluations, testifying for either side, and now makes a  
23 living participating in these cases, because it's been a  
24 great growth industry for psychologists in this area.

25 Now, Mr. Carta carried on with these minors several

1 times. In our brief we said approximately a dozen times.  
2 Some of the interactions were over the course of months.  
3 Some of them were one shot incidents. But the important  
4 thing to I think recognize first about Mr. Carta is that the  
5 government said he was not deterred all these years. But,  
6 in fact, the typical person that we see in these types of  
7 proceedings is someone who has been sanctioned for a crime  
8 of some kind, has been in prison or something and then gone  
9 on to reoffend.

10 And Mr. Carta is not a recidivist. He has carried  
11 on these relationships for a number of years and then got  
12 into the child porn and, you know, got -- this was his first  
13 serious sentence or sanction of any kind.

14 His life I think turned out in a way that he  
15 wouldn't have wished starting out. His childhood was  
16 unhappy. He certainly engaged in sex as a form of  
17 connecting with people when he wasn't able to connect with  
18 people on different levels. All that the evidence will show  
19 is a kind of complex picture of someone who is not quite  
20 right.

21 But what it doesn't show is the pattern of a serial  
22 child molester or someone who does violence in order to gain  
23 compliance with his sexual aims.

24 There are going be two issues legally in dispute  
25 here for the most part but the first issue is it's

1       questionable whether his conduct, the type of conduct that  
2       is emerging that we've described is sexually violent conduct  
3       or child molestation for the purposes of the statute. It's  
4       a question of statutory interpretation. And we've submitted  
5       some materials about it.

6               But child molestation, the word "child" evokes the  
7       image of a prepubescent. And this sexual activity with  
8       people who are sexually mature, although they are pubescent,  
9       is, or maturing and capable of having sexual contact and  
10      even desirous of sexual conduct or contact, it doesn't  
11      clearly fit the definition of child molestation that comes  
12      to mind and what we argue in the papers what Congress had in  
13      mind when they demarcated the statute child molestation and  
14      sexually violent conduct.

15             What you will see the experts in this case do is  
16      they take in those terms and define them for themselves so  
17      they're able to go about their work. For example,  
18      Dr. Phenix I expect will testify that these interactions are  
19      sexually violent because of what she imputes as a  
20      unhealthiness to the relationship or a harm that naturally  
21      results from them even though there is no overt violence in  
22      the acts.

23             Now, the second issue or I think one main issue  
24      that we're going to be contesting is the validity of the  
25      diagnosis in this case. Mr. Carta has had, and there is no

1 question that he has sexual interest in adolescents. The  
2 question is whether that is a mental disorder for purposes  
3 of psychology, for purposes of the statute.

4 Now, it's absolutely correct that the government  
5 says that this diagnosis appears in state cases, state  
6 commitment cases. And, again, these cases -- there is a  
7 recent *New York*, or now not so recent, a 2007 overview in  
8 the *New York Times* about these states, there is  
9 approximately twenty that have these statutes now. And so  
10 it's attracting a lot of psychologists and people to the  
11 field, but that the diagnosis is found in state cases.

12 But the two federal courts, and we cite this in our  
13 papers, to have considered the diagnosis have both chucked  
14 it. They have both thrown it out.

15 The first was in the Shields case. Judge Saris  
16 took evidence on the issue and said it's not a valid  
17 diagnosis.

18 The other case is a variation on the theme, the  
19 United States versus Abregana case in Hawaii which is also a  
20 not SDP finding at the end. But part of the finding there  
21 was that while accepting for the purposes of the opinion  
22 that this hebephilia was a mental disorder, it was not a  
23 serious mental disorder which the statute also requires.

24 Now, the state's expert here will say, Dr. Phenix  
25 will say that this is commonly done, and it no doubt is.

1           **THE COURT:** What is commonly done?

2           **MR. GOLD:** Commonly diagnosed. People who have  
3 illegal sexual interactions with adolescents are commonly  
4 diagnosed as pedophiles.

5           And when we deposed Dr. Phenix she cited some  
6 literature and some recent research articles about the  
7 diagnosis or the kind of discriminable sexual interest in  
8 adolescents as being the primary sexual interest.

9           What the government says and what her argument is  
10 is that it fits in because it's -- there is a not otherwise  
11 specified category in this paraphilia section of the  
12 *Diagnostic and Statistical Manual*. And then you can put any  
13 descriptor that you want.

14           The basic response to that is and will be that the  
15 way that this section of the DSM is set up, they set out the  
16 major paraphilias and then they say, and these are just  
17 deviant sexual or pressing deviant sexual mental disorders.  
18 But if you have one that is less commonly encountered, you  
19 can use the NOS. And then they have all these bizarre and  
20 very rare disorders that they tick off as examples.

21           What the state's expert -- a lot of this goes back  
22 to a name which will recur in these proceedings -- Dennis  
23 Doren is an evaluator. He's someone who works at one of  
24 these places or worked until he retired at the Sand Ridge  
25 Treatment Facility, one of these places in the midwest where

1 he does these types of evaluations. He came out with a very  
2 influential book in 2002 called *Evaluating Sex Offenders*.  
3 And what that book did is it established this hebephilia  
4 diagnosis saying if you find someone who has this illegal  
5 activity with teenagers, you can diagnose them in this way.

6 And it also did promote a very controversial  
7 diagnosis in the field, paraphilia NOS, not consent, which  
8 the critique of the diagnosis is, whatever its validity,  
9 that it was sort of jury-rigged or engineered for the  
10 purpose of facilitating the civil commitment of rapists in  
11 these types of proceedings. So this is the type of conflict  
12 that there is here.

13 Now, before just leaving the hebephilia issue for  
14 the trial, again, there is no question that Mr. Carta has a  
15 sexual interest in adolescents. The question is whether  
16 that is a disorder.

17 Now, there is some political element in diagnosing,  
18 and I think we will see that evident during the course of  
19 this. But I think the best way to demonstrate it is that  
20 there is no currently paraphilia NOS homosexuality. And I  
21 am going to ask Dr. Phenix about what the difference is  
22 between those two diagnoses but that these are basically  
23 political choices that they have made.

24 And when you look at the literature --

25 **THE COURT:** Say that again. I want to make sure I

1 follow it. And I remember reading it in your brief but I  
2 want to make sure I followed that. There is no designation  
3 of homosexuality as a discrete illness; is that what you are  
4 saying?

5 **MR. GOLD:** Well, there was, Your Honor.

6 **THE COURT:** There is not now.

7 **MR. GOLD:** There is not now, right.

8 **THE COURT:** And it was removed?

9 **MR. GOLD:** It was removed essentially for political  
10 reasons. Good ones I would argue but reasons that are not  
11 necessarily tied to empirical findings or anything of that  
12 nature.

13 We have some research about this hebephilia  
14 diagnostic concept. And just before moving beyond this,  
15 we've looked at the research and what it is is very  
16 promising research we can characterize it showing that they  
17 are able to discriminate people who are primarily interested  
18 in pubescents.

19 But the way those researchers are defining it, even  
20 if we accepted that, and the article that we are discussing  
21 in those papers is essentially a proposal to add this to,  
22 you know, the DSM-V is coming out in a little while, in a  
23 few years. And they have got these committees convening now  
24 who are discussing what the diagnoses should be, what  
25 changes they should make.

1           So in that political context they published this  
2 article saying these are our findings. We think you should  
3 modify the hebephilia diagnosis by bumping it past  
4 prepubescence a couple years or come up with your own  
5 diagnosis. That's basically what they're saying about this.

6           But even that, you know, the authors of that  
7 article -- and we're going to be coming back to this line a  
8 few times -- say no one would want to characterize sexual  
9 interest in mid or late or even mid adolescence as a  
10 psychopathology. That's what they say. And this is part of  
11 the corpus of literature that Dr. Phenix is purporting to  
12 apply, but what she's saying is hebephilia or NOS hebephilia  
13 is simply sexual interest in post-pubescents. That's  
14 actually what she states in the literature.

15           So based on that we are making a Daubert challenge.  
16 The typical things that you find with a diagnosis, I mean,  
17 things aren't included presumably for a reason, that they do  
18 epidemiological studies or they do their type of things to  
19 find out if there is inter-rater reliability to determine if  
20 they're looking at a valid construct simply hasn't been  
21 done. And the variant of this diagnosis which comes from we  
22 would argue this Dennis Doren book primarily, which is not a  
23 peer reviewed document, although it's cited occasionally in  
24 the literature, is a very different diagnosis than even what  
25 the most promising research is showing should be.



1 I mean, what we have here is someone who is  
2 starting relationships with 13-year olds, continuing them  
3 until they're 17. And, you know, we have this problem. No  
4 one is arguing that, or will be arguing that Mr. Carta's  
5 relationship with the 17-year old that he had at the time  
6 that he was arrested was healthy. It wasn't.

7 It's the sort of thing that Mr. Carta, even now  
8 reflecting on it, sees as a relationship with a power  
9 imbalance and not a great relationship and not something  
10 that he should continue with and can use treatment or be  
11 educated or what have you about getting into better or more  
12 healthy relationships, but that's not the point.

13 The point is does the relationship with a 16-year  
14 old make it a psychopathology as opposed to, you know,  
15 behavioral issues that, you know, can be treated but aren't  
16 a sufficient predicate for lifetime civil commitment.

17 There is also a personality disorder diagnosis.

18 **THE COURT:** But here according to you we have both.  
19 We have the activity with an adolescent which I take it,  
20 what do we consider an adolescent to be? Sixteen,  
21 seventeen?

22 **MR. GOLD:** Well, that's a definitional question  
23 that is not a clear answer. Sure, there is -- the word that  
24 we're using is pubescent, post-pubescent, adolescent. But  
25 the diagnosis that Dr. Phenix, you know, she'll be able to

1 testify about this more, says it's interest in  
2 post-pubescence. But we're all post-pubescence so there is  
3 a sort of --

4 **THE COURT:** No. My question was going to be here,  
5 if I understand your opening statement, if I understand the  
6 background, your client admits to conduct with a 13-year old  
7 as well as the 17- and 18-year old.

8 **MR. GOLD:** That's right.

9 **THE COURT:** So he runs across the gambit.

10 **MR. GOLD:** Well, that's right.

11 **THE COURT:** And does that make a difference? Are  
12 you going to be arguing that that makes a difference? Does  
13 there have to be exclusivity to qualify for a particular  
14 diagnosis or can it be that his activities are broad enough  
15 to include several diagnoses?

16 **MR. GOLD:** Well, what we would argue in focusing  
17 on -- this goes back to the statute.

18 **THE COURT:** Do you understand my question?

19 **MR. GOLD:** I do I think and I'm going to try to  
20 answer it. And Dr. Bard who we are going to have on later  
21 will probably do a better job than I am capable of doing.

22 We have -- one thing I forgot to mention before  
23 which I want to say now is that the entire brief against  
24 Mr. Carta is his own statements basically. And that's just  
25 important to recognize. Typically we are looking at

1 criminal records and things like that. There is a little  
2 bit of that here. And obviously he was doing the child porn  
3 which is bad, although, his, you know, all the information  
4 we have about him comes from him.

5 And I think Dr. Wood who is going to testify was  
6 the intern who was his therapist when he was at this Butner,  
7 this Sex Offender Treatment Program at Butner, said he was  
8 very forthcoming. He was encouraged to be and he was. And  
9 he was truthful.

10 Now, what we -- what you will hear is that these  
11 diagnoses, you don't have to be exclusive to have the  
12 diagnosis, that's clear. But what is the real difference  
13 between a 17- and a 16-year old? The 13-year olds that we  
14 have seen are much too young to be engaging in sexual  
15 relationships with adult men obviously but we don't know  
16 whether sexual interest in them is a psychopathology.

17 The best proposal that we have going back to the  
18 article which is authored by a man named Ray Blanchard and  
19 some other people seem to define it, and they're a little  
20 cagey on this point, sexual interest in pubescence only  
21 which they sort of seem to define as between 12 and 14 but  
22 that is not the definition that is being put forward in this  
23 case. That's sexual interest in teenagers generally  
24 whatever they are. I think one of the problems here is that  
25 it's really hard to get a real angle on what we're talking

1 about here.

2 The behavior is -- I can move beyond hebephilia. I  
3 think I can go on, unless Your Honor has another question  
4 about it?

5 **THE COURT:** No, go ahead. You are supposed to be  
6 telling me what you expect your evidence is going to be or  
7 what the evidence is going to be in the case. So I am  
8 interested in your preview of coming events.

9 **MR. GOLD:** The struggle that I'm having now is kind  
10 of wrapped into the problems with the diagnosis that we're  
11 going to be picking away at when they testify about it. I  
12 asked Dr. Wood, and I'll ask him again today, about the  
13 issues that happened around treatment.

14 The basic issue with Mr. Carta I think we'll be  
15 able to demonstrate is that he is someone who has engaged in  
16 these relationships with willing people and sometimes, you  
17 know, children or, well, adolescents who are interested in  
18 sex. I think that's pretty clear. And he shouldn't be  
19 doing it. And he sometimes justifies it as useful for them  
20 or something like that. But that the interest itself is not  
21 deviant because it's found in many normal people who have  
22 been studied, sexual interest in adolescents, so that it's  
23 incorrect to characterize it as anything more than illegal  
24 behavior and not a psychopathology.

25 The next diagnosis in the case of Dr. Phenix or the

1 government proposes is --

2 **THE COURT:** Illegal depending on where you live.

3 **MR. GOLD:** Illegal depending on where you live,  
4 correct.

5 **THE COURT:** Where the act takes place.

6 **MR. GOLD:** Where the --

7 **THE COURT:** Or where the act takes place.

8 **MR. GOLD:** Where the act takes place.

9 Now, personality disorder, Dr. Phenix diagnosed him  
10 with a personality disorder, also this not otherwise  
11 specified category. And this is the primary vehicle where  
12 our take on this whole area of law and science is, you know,  
13 psychology being sort of conscripted to justify the state's  
14 aims in locking these guys up after the end of their prison  
15 sentences. And one of the vehicles is this not otherwise  
16 specified diagnosis.

17 That's the critique or the background where we  
18 start from, not that these diagnoses aren't of utility or  
19 what have you. But, again, when we were talking about the  
20 DSM and how they go about doing their stuff, the idea is  
21 that they have bodies, they do field research, they come up  
22 with criteria sets. They come up with better criteria sets  
23 when the diagnoses don't work out.

24 And the idea is is that that increases validity.  
25 And in a courtroom in the forensic context it increases our

1 confidence that we're talking about here is an actual  
2 empirical valid construct and not somebody's sort of  
3 characterization of a state of affairs, not something that  
4 is designed just for the purposes of one person.

5 Now, that's not to say that Mr. Carta is a, you  
6 know, a fully healthy human being. He does exhibit or he  
7 has exhibited traits that are associated with these two  
8 major personality disorders, antisocial and borderline.

9 The one thing about antisocial personality  
10 disorder, because it's been studied, that everyone agrees  
11 with is that the, if you've got it -- and almost everyone  
12 has got it because now it's been defined in a very broad  
13 way. Everyone in prison that is -- it tends to decline with  
14 age. The outward manifestations just tend to decline with  
15 age and be less present, you know, just part of the  
16 maturational process.

17 Now, Dr. Phenix diagnoses him with a personality  
18 disorder which really requires we will argue some sort of  
19 face-to-face interaction with a person and she didn't have  
20 it here. She wasn't -- she didn't interview Mr. Carta while  
21 Dr. Bard who interacted with him got a sense, and that's I  
22 think the sense that will emerge here, of someone who is six  
23 or seven years into his first major encounter with the law  
24 and -- when I say "encounter with the law," first major  
25 prison sentence. And it is burnt out. It's kind of moved

1 beyond some of the more antisocial behavior that he  
2 displayed in the past.

3 Now, the whole second part of this, while there  
4 is -- of these trials tends to go into this risk assessment  
5 testimony. The statute itself says that what we need to  
6 have is a psychologist saying that somebody is going to have  
7 serious difficulty controlling or refraining from sexually  
8 violent conduct or child molestation in the future.

9 And, again, we argue with respect to whether the  
10 conduct that we're talking about here even qualifies as one  
11 of those two things that Congress saw fit or had in mind to  
12 prevent when they passed this statute.

13 But there's two components to that. One is does  
14 this, does Mr. Carta have a volitional impairment. And  
15 that's what the Supreme Court in looking at these cases has  
16 said, well, what separates the committals from the  
17 non-committals is this idea that they have got a serious  
18 difficulty controlling themselves. They have got a  
19 volitional impairment.

20 The thinking was after the Kansas versus Hendricks  
21 decision that maybe that meant a complete lack of control.  
22 In the Kansas versus Crane decision they said, well,  
23 something is required. It's not a complete lack of control  
24 but a serious difficulty controlling behavior.

25 That itself is a standard in the law which we will

1     argue and the psychologists have to give us some opinion as  
2     to Mr. Carta's ability or, you know, perceived ability to  
3     control himself in the future.

4             There is also this kind of enterprise of risk  
5     assessment that we are going to be hearing a lot about. And  
6     in our papers we're not, the way these trials -- I  
7     participated in the trial in front of Judge Wolf. And it  
8     gets a little murky whether this stuff goes to the serious  
9     difficulty or is a separate sort of inquiry as to whether  
10    someone is actually going to be dangerous, which we say  
11    is -- you can't confine someone simply by -- and this is a  
12    longstanding principle in the law. You know, if you show  
13    someone's mentally ill but not dangerous, you can't hold  
14    them. If you show they're dangerous but they're not  
15    mentally ill, you can't hold them. So that this  
16    dangerousness requirement does the, you know, the testimony  
17    go to that or to the serious difficulty in controlling  
18    behavior.

19            Regardless, what we will learn about the field of  
20    psychology is that back in the '80s or actually for decades  
21    there has been this issue about how well clinicians predict  
22    behavior in a variety of contexts. And what the studies  
23    show is when they look at their ability, say someone is  
24    going to be dangerous, someone is going to do well on an  
25    exam, things of that, or do well in college after an exam,



1 that clinician's ability to predict the future is no better  
2 than chance. That's the finding. That's what most  
3 psychologists who you will hear testify about it will agree  
4 to.

5 But what you -- and so the response of the field  
6 has been this push toward empiricism, doing studies,  
7 isolating risk factors, ultimately coming up with these  
8 instruments, looking at the effect of age on the risk of  
9 reoffense.

10 And what the take home point is, what those, that  
11 instrumentation shows, what that empirical contribution to  
12 this proceeding shows is that Mr. Carta is actually not  
13 someone who can be said to be likely to reoffend, just based  
14 on the instruments.

15 And then I think part of the presentation that is  
16 very important is Mr. Carta, the child pornography stuff  
17 came to light. He had this thing which we will learn about  
18 with his live-in boyfriend who was 17, that not illegal but  
19 unhealthy relationship we talked about.

20 He has admitted to having a very brief and  
21 inappropriate sexual interaction with that man's younger  
22 brother. Part of his getting back at the original love  
23 interest. You know, he started to participate in treatment  
24 then. He was actually out, cooperated with the government,  
25 got a 5K letter at the end of that, and has done this

1 treatment, has done this sentence.

2 At the time he was sentenced he was given very  
3 stringent conditions, kind of looking at the same type of  
4 stuff by the sentencing judge in that case which will  
5 require him to do treatment, which will require him to, you  
6 know, comply with all the standard conditions and a lot of  
7 additional ones. That itself is sufficient for someone like  
8 Mr. Carta. That's the basic pitch.

9 You know, lifetime civil commitment is not  
10 appropriate. This sort of stuff is what is indicated or is  
11 appropriate for Mr. Carta, especially based on his record.  
12 He is not someone who has really been sanctioned, imprisoned  
13 for some type of sex offense and gone on to reoffend which  
14 is what you typically see in these cases.

15 We're going to hear about, the first part of the  
16 show here is Mr. Carta's failure in treatment, his dropping  
17 out of treatment. And that's not great but it's not we'll  
18 argue so significant as to indicate that he is presently  
19 dangerous.

20 He did fall into behavior patterns which very well  
21 may have been similar to the patterns he had around  
22 unhealthy relationships, many of which were legal when he  
23 was on the outside.

24 And Dr. Wood who we spoke with briefly last night  
25 and who is going to testify today who was an intern at the

1 time, he kind of spent a lot of time with Mr. Carta and  
2 tried to get him to stay in the program. Talked about this  
3 unhealthy behavior with these younger guys who are in the  
4 program.

5 **THE COURT:** I may have misheard. Did you say I  
6 spoke to him last night?

7 **MR. GOLD:** I did, yeah.

8 **THE COURT:** I spoke to him?

9 **MR. GOLD:** No, no, I, I said we.

10 **THE COURT:** Oh, all right. I thought you said that  
11 I did, I spoke to Dr. Wood. And I was going to say I have  
12 no memory of that.

13 (Laughter.)

14 **THE COURT:** Go ahead.

15 **MR. GOLD:** No, we did last night. He flew in  
16 yesterday from Arkansas.

17 **THE COURT:** All right.

18 **MR. GOLD:** But at the time that he dropped out, and  
19 Dr. Wood kind of shed a lot of light on that episode for us;  
20 but he has this thing, sort of dramatic at times. He wants  
21 to pull out. He comes back in. He did this with his other  
22 treatment programs, you know, general anti-recidivist  
23 program that he did at the Bureau of Prisons, the CODE  
24 Program. He would quit, come back. He would, you know,  
25 protest about quitting again and ultimately completed the

1 program.

2 He was doing that here and it seemed like he was  
3 too embarrassed the last time he quit since he threatened or  
4 cried wolf so many times, he just really followed through  
5 with it. But at that time there was no civil commitment.  
6 This was nothing hanging over his head. He wasn't mandated  
7 to do the treatment. He wasn't required to do any of the  
8 programming that he was doing. And he knew at that time  
9 that he would be released that he would have the opportunity  
10 to do treatment on the outside and be required to at that  
11 time.

12 That's important in understanding the context of  
13 that treatment of him dropping out.

14 That is it in a very beg nutshell, Your Honor. I  
15 would just say with respect to the Daubert issue, one thing  
16 we are also going to learn about these actuarial instruments  
17 that I touched on very briefly is that they --

18 **THE COURT:** That is not a Daubert issue, the  
19 actuarial instruments; right? I mean, both sides have  
20 adopted them. It is the definition that is the issue; do I  
21 understand that correctly?

22 **MR. GOLD:** That is how -- I understand we have a  
23 Daubert challenge in front of Your Honor that has been ruled  
24 on with regard to just the science of risk protection.

25 But one thing that was not apparent at that time

1 which has become apparent over the course of this trial is  
2 that when Dr. Phenix -- there has been a great change in the  
3 field while this case has been pending. Basically what they  
4 found is the way these actuarial instruments work, they get  
5 populations. They test them out. They get recidivism  
6 rates, estimates based on their development samples for  
7 different scores.

8 And so when they tell you high risk, you say, well,  
9 Doctor, what does that mean. Well, people with this score  
10 in the development sample reoffended at such and such a  
11 rate.

12 Well, those norms dated from the '80s and before  
13 and what our society has been experiencing independent of  
14 all of this is a decrease in many types of crimes, including  
15 sexual and violent crimes. And so they have just been  
16 coming out and continue to come out to this day with new  
17 norms which are significantly lower than what they were just  
18 months ago. And all these commitments that have been  
19 underway are, you know, have taken place under norms which  
20 were artificially inflated basically.

21 And so what Dr. Phenix has testified at the  
22 deposition in this case is that she uses the new norms as  
23 they come out. That they themselves have not been  
24 validated, subject to peer review or anything along those  
25 lines. They're just the authors of the instruments saying

1 we've got an issue here. The norms are actually much lower  
2 than they were understood to be.

3 It is my understanding the other actuarial  
4 instrument here, the MnSOST-R, those norms are anticipated  
5 to come out next month I believe. And they're also lower  
6 than what the instrument had previously indicated.

7 And so -- and that's what I think the testimony  
8 will uniformly be. So what we have here is a field so in  
9 flux that I think it's appropriate to renew that challenge  
10 in light of the evidence that will come in.

11 We've also got a hebephilia challenge as well based  
12 on, you know, if they had come in with the research which I  
13 believe is the state of the art right now, the hebephilia  
14 research that we've already put before the Court, we would  
15 be talking about the validity of that proposal. And that's  
16 the only proposal on the table that I am aware of. The fact  
17 that people in this field typically diagnose that as a  
18 separate or diagnose hebephilia in the context of these sort  
19 of criminal justice type proceedings is a separate issue.

20 To the extent that that proposal could be validated  
21 or accepted by the Court, what Dr. Phenix is testifying is  
22 to something else entirely.

23 So I guess what I'm saying is, yes, we would  
24 challenge the hebephilia. That is her primary Daubert  
25 challenge. But there is also grist for the Daubert with

1 respect to these changing norms that we're going to hear  
2 about.

3 Another thing about Dr. Phenix that we will learn  
4 is that she, when she drafted her report, she went about it  
5 in a particular way, a method called the adjusted actuarial  
6 method. And she herself in light of I guess advancing  
7 science based on findings that that method produced  
8 predictive accuracy has now gone to a pure, what she calls a  
9 pure actuarial method.

10 So that's the landscape, Your Honor.

11 **THE COURT:** Okay. Ready to go?

12 **MS. BOAL:** Yes, Your Honor.

13 Just for clarity sake, the government was not under  
14 any notice that they were challenging the actuarial  
15 instruments. We had understood the Daubert challenge was  
16 solely to the hebephilia.

17 **THE COURT:** That is my understanding too.

18 **MS. STACEY:** Your Honor, the government would call  
19 Dr. Michael Wood as its first witness.

20 **THE COURT:** Okay.

21 **MS. STACEY:** While the witness is going to the  
22 witness stand, Your Honor, may I ask that -- we have an  
23 extra binder of exhibits. May I ask that we put that on the  
24 witness stand for ease of reference?

25 **THE COURT:** Sure. Any objection?

1                   **MR. GOLD:** No objection.

2                               **JAMES MICHAEL WOOD, Sworn**

3                   **THE CLERK:** Thank you. You may be seated.

4                               **DIRECT EXAMINATION**

5 BY MS. STACEY

6       **Q.** Good morning.

7       **A.** Good morning.

8       **Q.** Would you please state your name for the record.

9       **A.** James Michael Wood.

10      **Q.** And would you please briefly describe your educational  
11 background and the degrees that you hold.

12      **A.** Yes, I have a bachelor's degree from the University of  
13 Arkansas, a master of science degree from the University of  
14 Central Arkansas and a doctor of philosophy in counseling  
15 psychology from the University of Memphis.

16      **Q.** And what is your current position?

17      **A.** I am a licensed psychologist for the Sex Offender  
18 Screening and Risk Assessment Program in the State of  
19 Arkansas.

20      **Q.** And how long have you held that position?

21      **A.** Nine years.

22      **Q.** What are the duties in your current position with the  
23 Arkansas Department of Correction?

24      **A.** Okay. Our program is tasked with doing risk assessment,  
25 community notification assessments on all registered sex



1 offenders in the state. We put them into tiers so that law  
2 enforcement knows the appropriate level of community  
3 notification for their offenders and also to help them  
4 understand the offenders in their community better.

5 **Q.** And do you hold any other positions at this time?

6 **A.** I do contract work in various capacities with, whether  
7 it teaching a psychology course, testing for a national  
8 testing company when they have research projects, and also  
9 court-appointed expert testimony in forensic issues for the  
10 circuit courts in Arkansas.

11 **Q.** And you mentioned you're a forensic examiner. What are  
12 your duties as a forensic examiner?

13 **A.** I contract with the state hospital in Arkansas. When  
14 people have competency or responsibility mental status at  
15 the time of the offense questions, I do those evaluations  
16 for the court.

17 **Q.** I'd like to direct your attention to September of 2005.  
18 At that time were you employed?

19 **A.** Yes, I was. I started my internship with the Bureau of  
20 Prisons at the Federal Correctional Complex in Butner, North  
21 Carolina.

22 **Q.** And what were your duties at Butner, North Carolina?

23 **A.** My rotation, my major rotation was at the Sex Offender  
24 Treatment Program. And so I spent the first six months of  
25 my time -- the internship is a year-long program so the

1 first six months was full time at the Sex Offender Treatment  
2 Program at Butner.

3 And then after six months we switched and I did a  
4 minor rotation in forensic mental health and general  
5 correctional practice.

6 Q. Okay. Did you say this was your doctoral internship?

7 A. Yes.

8 Q. Okay. And that lasted for how long?

9 A. It's one year.

10 Q. And what was your official position at the Bureau of  
11 Prisons at that time?

12 A. Psychology predoctoral intern.

13 Q. And as a psychology predoctoral intern, does somebody  
14 supervise your work at the Bureau of Prisons?

15 A. Yes.

16 Q. And who was that?

17 A. We had many supervisors. The overall supervision for  
18 the interns was Rick Landis. And then on each rotation, for  
19 instance, for the Sex Offender Treatment Program, the  
20 evaluations that I did, the psychosexual evaluation  
21 discharge report that are seen in this case were cosigned by  
22 Dr. Rob Melin.

23 When I did therapy, whether the group therapy or  
24 just individual sections, that was supervised by Dr. Carolyn  
25 Fraser.

1           And then we had weekly supervision with all the  
2           psychologists at the treatment program so there was feedback  
3           from multiple psychologists in the program.

4           **Q.** How long, Dr. Wood, have you worked with sex offenders?

5           **A.** Since 2000.

6           **Q.** During the time that you were at FCI Butner did you come  
7           to know Mr. Todd Carta?

8           **A.** I did.

9           **Q.** How did you come to know him?

10          **A.** I was assigned by the treatment staff when I started at  
11          the treatment program to be his primary individual  
12          therapist.

13          **Q.** And you said when you started at the treatment program,  
14          what do you mean by that?

15          **A.** When I started my internship, my first rotation in  
16          September was at the -- six months at the Sex Offender  
17          Treatment Program.

18          **Q.** And was the Sex Offender Treatment Program, was that at  
19          Butner?

20          **A.** Correct, at the medium Federal Correctional Institute at  
21          the complex.

22          **Q.** And generally what was the Sex Offender Treatment  
23          Program?

24          **A.** It was a -- at that time it was the only Sex Offender  
25          Treatment Program in the Bureau of Prisons. And it was

1 housed in a specific unit that the, I think there was a  
2 hundred, a hundred twenty inmates that were in the program.  
3 And they went through ten to twenty hours of specific  
4 treatment, group therapy, individual therapy. It's in a  
5 therapeutic community so that they're always getting  
6 feedback from their peers.

7 And they lived on the complex so they'd go out and  
8 have jobs in the general correctional environment but it was  
9 a specific program designated to help them manage their  
10 sexual deviance and prevent future recidivism.

11 Q. And what were the living arrangements like, the  
12 incarcerative living arrangements for someone who was in the  
13 Sex Offender Treatment Program?

14 A. Right. It was a specific unit that they lived in. And  
15 so there were, the treatment offices for all the  
16 psychologists that worked there were inside that unit. And  
17 the inmates' cells were kind of towards the back in  
18 different pods. And then we had a big treatment room where  
19 everyone could come together and we had smaller like group  
20 therapy rooms. So everything was housed in this one complex  
21 or in one unit.

22 Q. And what was the name of the unit?

23 A. I believe it was the Maryland Unit.

24 Q. Was your office located in the Maryland Unit?

25 A. Yes, it was.

1 Q. Did Mr. Carta participate in sex offender treatment?

2 A. He did.

3 Q. Did Mr. Carta have to sign any forms in order to  
4 participate in sex offender treatment?

5 A. He did. At the beginning of treatment he signed a  
6 consent to participate type form.

7 Q. And I'll ask you to just turn to tab 27 in the witness  
8 binder that's there before you.

9 And if you go a few pages in to the Bates stamp  
10 963.

11 A. I don't think it's under 27.

12 MS. STACEY: May I assist, Your Honor?

13 THE COURT: Yes.

14 BY MS. STACEY

15 Q. Do you have that, Doctor?

16 A. I do.

17 Q. All right. So looking at Bates stamp No. 963, is that  
18 the consent form that you were referring to earlier?

19 A. Yes.

20 Q. And how many pages is that consent form?

21 A. Three.

22 Q. And are those Mr. Carta's initials and signature on the  
23 consent form?

24 A. Yes.

25 Q. Okay. So is that the paperwork that Mr. Carta signed

1 before he started sex offender treatment?

2 **A.** Correct.

3 **Q.** Now, what is the goal of sex offender treatment for  
4 Mr. Carta?

5 **A.** In short, as I have said, it's to help the offender  
6 manage their sexual deviance --

7 **THE COURT:** Before you go on, am I to understand  
8 that these exhibits have all been agreed to and they are  
9 part of the case or are you going to offer them?

10 **MS. KELLEY:** They have not been agreed to.

11 **MS. STACEY:** The only objection, Your Honor, is the  
12 psycho patient privilege which this Court has deemed --

13 **THE COURT:** I have already ruled on that.

14 **MS. STACEY:** Yes. That's the only objection to  
15 these exhibits.

16 **THE COURT:** But you have to establish that this is  
17 in evidence. Are you going to offer this?

18 **MS. STACEY:** I will offer it. Your Honor, there is  
19 multi parts to this. I can offer this piece now or offer  
20 the entire exhibit as a whole at the end, whatever the  
21 Court's preference.

22 **THE COURT:** All right. You can put it in now.

23 **MS. KELLEY:** Well, if I may, that's not the only  
24 objection. If they're seeking to put, for example, his  
25 whole treatment record --

1           **THE COURT:** Well, I am just asking a question about  
2 this consent form.

3           **MS. KELLEY:** Okay.

4           **THE COURT:** Are you offering the consent form?

5           **MS. STACEY:** I am offering the consent --

6 BY MS. STACEY

7           **Q.** Is that a true and accurate copy of the consent form  
8 that Mr. Carta signed?

9           **A.** Yes, it is.

10           **MS. STACEY:** Then I would offer the consent form  
11 Bates 963 to 965 at this time.

12           **THE COURT:** Any objection?

13           **MR. GOLD:** No objection.

14           **THE COURT:** Okay. It comes in.

15           **(Government's Exhibit No. 25 received in evidence.)**

16 BY MS. STACEY

17           **Q.** What are the goals of sex offender treatment?

18           **A.** In short it is, as I mentioned, it's to help the  
19 offender learn to manage their sexual deviance, sexual  
20 behavior problem and to help prevent future recidivism.

21           **Q.** In this case what was Mr. Carta's sexual deviance?

22           **A.** Through working with him, doing the history intake that  
23 I did, it came to be that he verbalized that he had a  
24 specific sexual interest in young boys in the midst of  
25 pubescence.

1 Q. And can sex offender treatment cure his attraction to  
2 these boys in the midst of pubescence?

3 A. The common thinking right now is that there is no cure.  
4 We work with them to help them manage.

5 THE COURT: We work with what?

6 THE WITNESS: We work with the offender to help  
7 them manage the sexual behavior problem or sexual deviance  
8 that there is.

9 THE COURT: And what is the category pre-pubescent,  
10 what did you --

11 THE WITNESS: I said in working with him he said  
12 that his specific interest was in pubescent males. It was  
13 those in the midst of puberty, not prepubescent but who had  
14 actually achieved ability to orgasm and ejaculate. So right  
15 at the switch from prepubescence into pubescence.

16 THE COURT: And is there a typical age that you  
17 associate with that diagnosis?

18 THE WITNESS: Well, there is an average age. Maybe  
19 12, 13, 14 but as you know, it can individually vary from  
20 probably 10 to 15, 16.

21 THE COURT: Okay. Go ahead.

22 BY MS. STACEY

23 Q. What are the phases or components of sex offender  
24 treatment?

25 A. Basically there were four phases. There was the initial



1 orientation component, assessment, treatment, and then the  
2 fourth step is the relapse prevention release planning  
3 stage.

4 **Q.** Now, looking at each of these phases, what happens in  
5 the pretreatment and orientation phase of treatment?

6 **A.** That's the initial phase where the inmates are brought  
7 into the program and they're given an overview of what can  
8 be expected in the program, what the expectations are.  
9 They're doing some initial psychological testing and they're  
10 seeing if they have what it takes to get through the rigors  
11 of treatment.

12 So, yes, that's the initial phase.

13 **Q.** And did Mr. Carta participate in the orientation phase?

14 **A.** He did.

15 **Q.** Okay. Going to the second phase of sex offender  
16 treatment, what happens in that phase?

17 **A.** Okay. There is some overlap. And as I said, they start  
18 the psychological testing in that orientation phase and it  
19 carries through to the assessment phase. And so that's when  
20 they're completing the psychological testing that I talked  
21 about. We have a very thick, it's like 50, 60, 70 pages of  
22 a personal history questionnaire. It's called a PHQ. And  
23 that's where the inmate is really documenting their entire  
24 life.

25 And so once they complete that, that is when

1 they're assigned the individual therapist and we begin going  
2 over the history so that we can put together a psychosexual  
3 evaluation which is the first document that puts together  
4 all the parts of their history and comes up with a diagnosis  
5 and a treatment plan.

6 Q. And did Mr. Carta complete that phase?

7 A. He did.

8 Q. What happens in the next phase of sex offender  
9 treatment?

10 A. That's the active component of treatment where we're  
11 doing psycho educational groups, doing group therapy,  
12 individual therapy, community meetings, really the heart of  
13 the treatment program.

14 Q. And during the treatment phase what are the primary  
15 goals of treatment for each inmate?

16 A. There is overall general goals that we're hoping that  
17 they come forward with their sexual history because the goal  
18 is is that they talk about all the things that they have  
19 done, even the stuff that they haven't been caught for so  
20 that they can eventually pass a polygraph exam at the end of  
21 treatment.

22 That we want them to accept responsibility for  
23 their sexual behavior, to learn how to manage any kind of  
24 sexual arousal or sexual deviant problems, to have empathy  
25 for their victims and learn to manage their sexual deviance.

1 Q. And did Mr. Carta meet those goals?

2 A. No.

3 Q. Why not?

4 A. He quit treatment.

5 Q. And at the time that he quit treatment, were there any  
6 other phases left in the Sex Offender Treatment Program?

7 A. Right. He would have continued in the treatment phase  
8 in that we didn't get to the relapse prevention or release  
9 planning stage.

10 Q. And what is release planning?

11 A. That's where they take everything that they -- the  
12 program participants take everything that they have learned  
13 and they make an individual relapse prevention plan. It's  
14 very elaborate. It talks about the individuals of their  
15 case and then they can go and give it to people that, when  
16 they release out, to their probation officer, to people that  
17 are going to help hold them accountable. If they're going  
18 to live with specific people, they can give that information  
19 to them and it documents their history and their interests.

20 And examples I've seen are if the person might say  
21 this is what I do, if I'm going to start manipulating you,  
22 these are the signs to watch for that I might be sliding  
23 back towards a new offense. Here's how you can hold me  
24 accountable. Here's the steps you can take. So it's a very  
25 detailed plan that -- it's a culmination of treatment. It

1 can be like a 40- or 50-page document, type document.

2 Q. And does that document exist for Mr. Carta?

3 A. No.

4 Q. And why is that?

5 A. He quit the treatment.

6 Q. Okay.

7 A. Voluntarily.

8 Q. How long was Mr. Carta in sex offender treatment?

9 A. This consent form is -- the orientation phase was dated  
10 July 26, '05. I think the discharge report says early March  
11 of 2006.

12 Q. Okay.

13 A. So seven months roughly.

14 Q. Okay. Now, after Mr. Carta was initially assigned to  
15 you, did you meet with Mr. Carta?

16 A. I did.

17 Q. And why did you meet with him?

18 A. I initially meet to introduce myself, to go over what  
19 could be expected from treatment, to talk about the informed  
20 consent to participate in treatment, to go back over this  
21 form, the limits of confidentiality, to get a feel for where  
22 he stood on his motivation for treatment and to begin  
23 gathering information to do that initial in-depth report,  
24 the psychosexual evaluation.

25 Q. And I'll ask you to turn to, it's tab 24 of the binder

1 that's before you.

2 A. Okay.

3 Q. Did you make notes of your treatment sessions with  
4 Mr. Carta?

5 A. I did. Every session was documented in the Bureau of  
6 Prisons PDS computer system.

7 Q. And looking at what's been marked at tab 24 in the book,  
8 are those notes that you made?

9 A. Correct.

10 Q. And why did you make the notes?

11 A. It's standard practice to document all of your  
12 interactions with a patient or client.

13 Q. And were those notes kept in the regular course of  
14 business at the Bureau of Prisons?

15 A. Yes.

16 Q. Are those notes listed at tab 24, are they a true and  
17 accurate copy of the notes that you kept on September 29,  
18 2005?

19 A. I think I'm looking at the wrong --

20 Q. Do you have Exhibits 24 and 25 --

21 A. What's the page number? Is it 409?

22 MS. STACEY: Might I assist, Your Honor?

23 THE COURT: Yes.

24 BY MS. STACEY

25 Q. It's Exhibit 24.

1     **A.** Oh, yeah, I was looking at December. There was one  
2 before.

3             Yes, September 29, 2005.

4     **Q.** And those are notes from your treatment session with  
5 Mr. Carta?

6     **A.** Correct.

7     **Q.** And you made the notes on that date?

8     **A.** Yes.

9             **MS. STACEY:** Your Honor, I would now move at this  
10 time for Exhibit 24 into evidence.

11            **MR. GOLD:** Your Honor, we are going to object. Why  
12 is he testifying now, shouldn't he testify first to see if  
13 his memory is exhausted before entering the notes?

14            **THE COURT:** Well, I take it this is just in the  
15 form of a verbal act. These are notes that he took. They  
16 are not coming in for the truth of the assertions in the  
17 notes, just that this is part of his operation.

18            **MS. STACEY:** Furthermore they are a business  
19 record, Your Honor. And I have business certificates if  
20 necessary (indicating).

21            **THE COURT:** I am going to let them in.

22            **MR. GOLD:** If we can just note one more objection  
23 on a different ground, same objection, that given the nature  
24 of these proceedings we argue that the notes, these  
25 underlying notes are cumulative. The experts whose opinions

1 are crucial to the Court's determinations have reviewed them  
2 and made determinations about them. Having these underlying  
3 documents in is unnecessary and cumulative.

4 **THE COURT:** Overruled.

5 **(Government's Exhibit No. 24 received in evidence.)**

6 BY MS. STACEY

7 **Q.** Now, looking at what's now been marked as Exhibit 24,  
8 you testified that you went over the limits of  
9 confidentially with Mr. Carta. What does that mean?

10 **A.** Well, a basic tenet of therapy is that a patient has or  
11 a client has confidentiality, that, you know, you won't  
12 reveal information that is obtained during the course of  
13 treatment.

14 It's a little different in the Sex Offender  
15 Treatment Program at the Bureau of Prisons in that there are  
16 limits to that confidentiality and that we went over some of  
17 those. That information would be shared upon release with  
18 the Probation or Parole Office that might be supervising  
19 him. There was information about other agencies in the  
20 Department of Justice.

21 If information came out in the course of therapy  
22 that there was a specified minor victim that they had  
23 sexually assaulted, that we would, are mandated reporters  
24 and that we would report that.

25 **Q.** And did you go over the consent form that you previously

1 testified to?

2 **A.** Yes.

3 **Q.** Now, during this initial treatment center -- treatment  
4 sessions with Mr. Carta, did you discuss his victims at that  
5 time?

6 **A.** We did.

7 **Q.** And what is it that he told you?

8 **A.** I was beginning the process of gathering information to  
9 do that initial psychosexual evaluation and begin the  
10 diagnosis process and so I was seeing where he was with his  
11 motivation for treatment, setting out what are his goals for  
12 treatment, and trying to get an overview of what his  
13 problems were.

14 And he summarized for me that he had been working  
15 on that Personal History Questionnaire, that thick document  
16 to document all the types of victims he had had. And he  
17 summarized to me that he characterized having eleven victims  
18 of sexual assault or abuse.

19 And then he kind of outlined, he started when he  
20 was young, at 13 his first sexual offense and then gave an  
21 overview of some of those offenses.

22 **Q.** Did Mr. Carta express any definitiveness about who his  
23 victims were?

24 **A.** Sometimes. There were victims that he would list as a  
25 victim and then he would question whether they were truly



1 victims such as if they gave consent because they were old  
2 enough, they were in the stage of puberty where they could  
3 have orgasm and ejaculation. He felt that that was a signal  
4 that they were old enough to consent to sexual interaction.  
5 So he would say I guess because he's learned from the  
6 treatment program that this technically is a victim, he  
7 questioned whether this was truly accurate.

8 Q. And as a treatment provider, was that significant to  
9 you?

10 A. Yes.

11 Q. Why?

12 A. Those are the kind of what we call cognitive distortions  
13 or thinking errors that we try to confront or work within  
14 treatment. The type of thinking that this problematically  
15 (ph.) gets them in trouble or it gives them permission to  
16 commit their offense.

17 Q. And at the time he made these statements to you about  
18 doubting who his victims were, how long had he been in the  
19 Sex Offender Treatment Program?

20 A. That initial orientation phase started in late July and  
21 then I was meeting with him for our initial session on  
22 September 29, 2005.

23 Q. So approximately two months?

24 A. Yes.

25 Q. Was Mr. Carta committed to treatment to you at the time

1 he met with you?

2 **A.** You mean invested when you say committed?

3 **Q.** Let me ask, did he ever express any feelings about  
4 treatment to you?

5 **A.** Yeah, he did. And the best way I'll characterize it is  
6 ambivalence. He came across as wanting help for his sexual  
7 behavior problem but not really sure whether he could make  
8 it in the treatment program for a variety of reasons. So he  
9 was on the fence it seemed.

10 **Q.** At the end of this initial session with him in September  
11 of 2005 did you discuss a course of treatment with him?

12 **A.** I did.

13 **Q.** And what was the course of treatment?

14 **A.** I briefly went over what, now that he was in this new  
15 phase, I was his individual therapist, what the treatment  
16 for him was going to look like, that we were going to meet I  
17 think at that time weekly for approximately a month so I  
18 could build rapport with him, get to know him better, gather  
19 information for that detailed psychosexual evaluation that I  
20 was going to do. And also went over that he was going to  
21 get assigned to a group therapy group and to psycho  
22 educational groups and what the course of treatment was  
23 going to look like.

24 **Q.** And how often did you meet with Mr. Carta?

25 **A.** We were scheduled, like I said, to meet weekly. And I

1 think the notes support that we met weekly in that first  
2 month. And then it was supposed to taper off to maybe once  
3 or twice a month over the rest of therapy or as needed. So  
4 if there were problems or a crisis or just if they needed  
5 something, they would put in a request for treatment so it  
6 was more often than was anticipated.

7 **Q.** And why was it more often than anticipated?

8 **A.** He was having problems in treatment and he was needing  
9 to talk about those.

10 **Q.** Now, a bit earlier you testified about these personal  
11 questionnaires that Mr. Carta was required to complete. Why  
12 was he required to complete that?

13 **A.** It's standard operating procedure in the program to  
14 gather information, for them to have time, the inmates in  
15 the program to think about all their history so that it can  
16 be documented first. When someone like myself as the  
17 primary therapist sits down to go over their history,  
18 they've got that information.

19 Ultimately over the course of therapy it's not  
20 uncommon for new information about new victims and new  
21 behaviors to come out for a variety of reasons. And so they  
22 will do -- we'll give them an updated Personal History  
23 Questionnaire.

24 The ultimate goal is I think the polygraph examiner  
25 at the end of treatment, Dr. Burke, tests them, gives them a

1 polygraph exam whether they were truthful on that Personal  
2 History Questionnaire. And the goal, of course, is to pass  
3 the polygraph about that they were truthful on that  
4 document.

5 Q. And did Mr. Carta ever get to the polygraph stage?

6 A. Not that I'm aware of, no.

7 Q. Okay. I'd ask you to turn to tab 27 of that notebook.

8 A. Okay.

9 Q. And after the discharge report, starting at Bates page  
10 1023, do you see that document?

11 A. You said tab 27?

12 Q. Yes.

13 A. I am having trouble here.

14 MS. STACEY: May I assist?

15 THE COURT: Go ahead.

16 MS. STACEY: Thank you.

17 (Pause in proceedings.)

18 A. Okay. Thanks.

19 Q. Okay. What is the name of that document?

20 A. That is the Sex Offender Treatment Program Personal  
21 History Questionnaire Update Form.

22 Q. And is that the update that you just referenced in your  
23 testimony?

24 A. Correct. There is a note on there saying that that was  
25 the second PHQ that he was given.

1 Q. Okay. And is that Mr. Carta's handwriting on the  
2 update?

3 A. I believe so, yes.

4 Q. And is that something that you reviewed during your  
5 therapy and treatment with him?

6 A. Yes.

7 Q. And that was kept at the Bureau of Prisons in  
8 Mr. Carta's file?

9 A. Correct.

10 MS. STACEY: Your Honor, at this time I move for  
11 admission of the PHQ Update Form into evidence.

12 MR. GOLD: No objection.

13 THE COURT: It comes in.

14 (Government's Exhibit No. 27 received in evidence.)

15 BY MS. STACEY

16 Q. I want to ask you to stay there and turn to Bates page  
17 1072.

18 A. Okay.

19 Q. And what is the name of that document?

20 A. That's the Sex Offender Treatment Program Psychosexual  
21 History Questionnaire.

22 Q. And is that the first questionnaire that Mr. Carta was  
23 required to complete?

24 A. I believe so. I don't see a date on it but I believe  
25 so, yes. The last page is not dated but I do believe it is.

1 Q. Okay. And is that Mr. Carta's signature on the --

2 A. Yeah, it appears to be.

3 Q. On the last page?

4 A. Mm-hmm.

5 Q. And is that a document that you reviewed during your  
6 treatment of Mr. Carta?

7 A. Yes.

8 Q. And was that kept in the Sex Offender Treatment file at  
9 the Bureau of Prisons?

10 A. Yes.

11 MS. STACEY: At this time I would move for  
12 admission of the history questionnaire into evidence.

13 MS. KELLEY: Your Honor, if I could just be heard  
14 on this. We don't intend to switch off all the time, but  
15 these are such highly personal treatment records --

16 THE COURT: I ruled on it.

17 MS. KELLEY: Well, I know you ruled that they can  
18 be given to the experts in this case. For them --

19 THE COURT: I am going to let them in.

20 MS. KELLEY: Well, can we at least ask if you are  
21 admitting them, that they be somehow held under seal and not  
22 made part of the public record of the case?

23 THE COURT: Do you have any objection to that?

24 MS. STACEY: No objection.

25 THE COURT: Okay. We will do that.

1           **MS. KELLEY:** All of these treatment records,  
2           please, because it's just --

3           **THE COURT:** You have made your point. You work  
4           with Ms. Lovett to create a very satisfactory sealing  
5           program for you, okay.

6           **MS. KELLEY:** Thank you.

7           **(Government's Exhibit No. 22 received in evidence.)**

8           BY MS. STACEY

9           **Q.** Now, you also mentioned during your course of treatment  
10          with Mr. Carta that you were aiming toward completion of a  
11          psychosexual evaluation; is that right?

12          **A.** Correct.

13          **Q.** And what is that?

14          **A.** It's an in-depth document. A psychological evaluation  
15          in the normal course of treatment is a history and  
16          psychological testing and then we add, we have an added  
17          component in sex offender treatment where we do detailed  
18          exploration of their sexual history. So they're in the  
19          psychosexual component of the report.

20                 And it's a way for us to gather information to be  
21          able to accurately diagnose, make a treatment plan and that  
22          all the psychologists in the program can then understand at  
23          a glance, because we're all working in the different groups  
24          and activities with the same inmates and so everyone doesn't  
25          have to go do their own in-depth history. They can then

1 share that report with each other.

2 That information is also used upon discharge to  
3 make a discharge report that goes to the probation/parole  
4 officer so they can supervise the offender in the community.

5 Q. And in doing a psychosexual evaluation, I'm going to ask  
6 you to look at Exhibit 25 in the binder.

7 A. Okay.

8 Q. And is that document, is that the psychosexual  
9 evaluation?

10 A. Yes.

11 Q. Did you author that evaluation?

12 A. I did.

13 Q. And did the person supervising you sign off on that as  
14 well?

15 A. He did.

16 Q. And is that a true and accurate copy of your  
17 psychosexual evaluation?

18 A. It appears to be, yes.

19 Q. And you kept that as part of your duties as the  
20 psychological intern?

21 A. Correct.

22 MS. STACEY: At this time I'd move for admission of  
23 Exhibit 25 into evidence.

24 MS. KELLEY: If I may just make one other  
25 objection, Your Honor, which is in some of these materials



1 this witness opines concerning dangerousness and other kind  
2 of conclusory information from him. This isn't just  
3 factual. You know, we were informed that this was a fact  
4 witness to talk about facts about treatment but we're now  
5 moving into evidence, all kinds of expert conclusions, et  
6 cetera, from someone who at the time he authored this  
7 doesn't even have a doctorate.

8 **THE COURT:** I understand. I am going to let it in.

9 **MS. KELLEY:** Well, note our objection.

10 **THE COURT:** Yes.

11 **(Government's Exhibit No. 25 received in evidence.)**

12 BY MS. STACEY

13 **Q.** Now, what did Mr. Carta -- did you document, in  
14 Exhibit 25 did you document Mr. Carta's federal offense  
15 history?

16 **A.** I did.

17 **Q.** Now, what did Mr. Carta tell you --

18 **THE COURT:** Federal?

19 **MS. STACEY:** Federal offense history.

20 BY MS. STACEY

21 **Q.** What did Mr. Carta tell you about his federal offense  
22 history?

23 **A.** There is a section in the report in which I get his  
24 version and in essence he says that he reflected how -- I am  
25 trying to find it.

1           That he was caught with ten to twenty thousand  
2 images of child pornography. And he estimated that at the  
3 height of his collecting he had approximately 50,000 images  
4 of child pornography.

5           He also talked about the depth or scope of the  
6 problem, that he bought a computer for collecting child  
7 pornography and the depth of the problem, that it got to be  
8 where he wasn't taking care of daily needs, of going to work  
9 or bathing at times because he was so entrenched in viewing  
10 the child pornography.

11       **Q.** And did he tell you how many images that he had at the  
12 height of his collecting?

13       **A.** Yes, he estimated 50,000.

14       **Q.** Did he say anything else to you about the way he kept  
15 the child pornography images that he collected?

16       **A.** I think he had documented in the Personal History  
17 Questionnaire how he had them categorized in specific  
18 folders. And he also told me about having specific  
19 encryption programs that could help evade detection by law  
20 enforcement.

21       **Q.** Now, as a treatment provider is this information  
22 important to you?

23       **A.** Absolutely.

24       **Q.** And why is that?

25       **A.** It goes to the strength of the deviant sexual interest.

1 Q. Did you make any observations as you were preparing your  
2 psychosexual evaluation, did you make any observations about  
3 Mr. Carta's insight?

4 A. I did. I was -- I thought it was a good sign that he  
5 appeared to be so forthcoming about his history at the early  
6 stages of treatment but in the same vein it was problematic  
7 that he was very evident with his distortions about children  
8 and sex. Whether pubescent children who are in the 13-,  
9 14-year old range could consent to sex.

10 And at one point it was really striking because he  
11 said that he thought when he was, you know, in his thirties  
12 or forties and had sex with a 13-year old that that child  
13 should also be equally culpable of breaking the law. So  
14 those kind of distortions caught my attention.

15 Q. And was that important to you as a treatment provider?

16 A. Yes.

17 Q. Why is that?

18 A. Because as I explained earlier, those are the type of  
19 thinking patterns that we want to expose to therapy and try  
20 to correct.

21 Q. Did you also review Mr. Carta's history of sexual  
22 relationships for this?

23 A. Yes, I did.

24 Q. And what is it that you learned from Mr. Carta?

25 A. About his sexual history?

1 Q. Yes.

2 A. There was a lengthy history of abusive sexual behavior  
3 starting in his early adolescence and multiple sexual  
4 contacts mainly with young males in the 13- to 17-year old  
5 range.

6 And he did have some adult relationships that  
7 seemed pretty chaotic in that -- I forgot the word he  
8 used -- suffocated people, a real intense relationship. And  
9 that he would almost drive them off. And then if they would  
10 go away, then he would kind of be vengeful about it and make  
11 flyers or posters about people. There was a couple  
12 incidents like that, or get back at people in some way so  
13 that they would lose their relationships, outside  
14 relationships and have no one but him to come back to.

15 Q. When Mr. Carta told you about his vengeful behavior and  
16 the example making flyers, was that important to you as a  
17 treatment provider?

18 A. Yes.

19 Q. Why?

20 A. I thought it spoke, it spoke to two things. The chaotic  
21 relationships that he had engaged in and also towards the  
22 diagnosis of the personality disorder that I was formulating  
23 at that time.

24 Q. And as part of the psychosexual evaluation did you also  
25 review Mr. Carta's job history?

1     **A.** I think there was a job history as part of the  
2     presentence investigation and then his self-report of a job  
3     history.

4     **Q.** And what did he self-report to you?

5     **A.** A very unstable work relationship. He's never had a job  
6     for long. I think he said the longest was eight months.  
7     And he estimated he's held approximately one hundred jobs.

8     **Q.** And is that important to you as a treatment provider?

9     **A.** Yes.

10    **Q.** Why is that?

11    **A.** That goes again to the instability in his life and also  
12    towards my formulation of the personality disorder I was  
13    working with.

14    **Q.** Now, as part of this evaluation, did you also look at  
15    Mr. Carta's psychiatric history?

16    **A.** Yes, what was documented in his self-report.

17    **Q.** Okay. What did he self-report to you in terms of the  
18    psychiatric history?

19    **A.** That is when I learned that he had previously been, I  
20    guess before he came to prison had been in a sex offender,  
21    outpatient in the community sex offender treatment program.  
22    I wasn't aware of that until we were talking.

23    **Q.** And did he finish that program in the community?

24    **A.** I don't believe so.

25    **Q.** And was that important to you?

1     **A.** Yes, because it flagged for me that there had been prior  
2     sexual, some type of sexual involvement that the court felt  
3     that he needed treatment for.

4     **Q.** And was there anything else that was important to you as  
5     a treatment provider that you got through the psychiatric  
6     history from Mr. Carta?

7     **A.** I don't think so.

8     **Q.** Now, did Mr. Carta talk to you at all about his  
9     substance abuse history?

10    **A.** He did.

11    **Q.** And what is it that you learned from Mr. Carta about his  
12    substance abuse history?

13    **A.** He had a history of abusing several substances. Alcohol  
14    was one. Daily marijuana use for a lengthy period of time.  
15    And there was a period when he was following the Grateful  
16    Dead for like five years and he said he was doing a lot of  
17    LSD.

18    **Q.** And is that important to you as a treatment provider?

19    **A.** Yes.

20    **Q.** Why is that?

21    **A.** It's just another area that we want to address because  
22    that can factor -- you can't follow a relapse prevention  
23    plan when you get out if you're disinhibited on drugs or not  
24    caring if, you know.

25    **Q.** Okay. And going back for one minute to the psychiatric

1 history, if you look at the second line under the paragraph  
2 entitled, "Psychiatric History," do you see your notation  
3 about a relationship that Mr. Carta had with someone named  
4 Fred?

5 **THE COURT:** Fred?

6 **MS. STACEY:** Fred.

7 **A.** Yes.

8 **Q.** And why was that -- why did you note that there? Why is  
9 it significant to you?

10 **A.** It represented an official conviction. It was a  
11 conviction for a breach of peace and risk of injury to a  
12 minor in which it came to light that that's where the sexual  
13 assault charge for Fred's younger brother, I think it was a  
14 15-year old brother.

15 And the way I understood it from Mr. Carta is  
16 through the negotiated plea process the sexual assault  
17 charge was dismissed I guess in exchange for the breach of  
18 peace, breach of peace and risk of injury. And so then he  
19 went to sex offender treatment. So it's informative to look  
20 at his criminal history and history of violence and sexual,  
21 prior sexual offending offenses.

22 **Q.** And did you ask or speak to Mr. Carta about his criminal  
23 history?

24 **A.** I did.

25 **Q.** And what is it that you learned about his criminal

1 history?

2 **A.** In combination with talking with him and looking at the  
3 documents, prior criminal history and the presentence  
4 investigation, I had an extensive criminal history of a  
5 variety of different things: Larceny, burglary, possession  
6 of marijuana, controlled substances, criminal mischief,  
7 failure to appear, breach of peace, criminal trespass,  
8 harassment, disorderly conduct, risk of injury.

9 **Q.** And is that important to you as a treatment provider?

10 **A.** Yes.

11 **Q.** Why is that?

12 **A.** That reflects just a diversity of criminal behavior.  
13 Those are important risk factors. If you have violence in  
14 your prior history, that's also a significant risk factor  
15 for when you're looking at sex offenders and their  
16 propensity to commit new offenses in the future.

17 **Q.** Now, I ask you as part of the sexual history that  
18 Mr. Carta reported to you, did you go over that with  
19 Mr. Carta?

20 **A.** In depth, yes.

21 **Q.** And what is it that he told you about his victims in the  
22 sexual history?

23 **A.** He reported that beginning when he was between the ages  
24 of eleven and thirteen he engaged in sexual contact with  
25 younger children. One of them specifically he said was in



1       diapers. He estimated the child to have been three or four.  
2       And I questioned, you know, that is kind of old to be in  
3       diapers but, so that's where we were, somewhere between  
4       diapers and three to four years old. He performed fellatio  
5       on that child. That was a neighborhood child.

6               And also he engaged in mutual fellatio on  
7       approximately ten occasions over a one-year period with a  
8       younger cousin who was three to four years younger than him.

9               So that was the beginning of what I was documenting  
10      as sexually abusive behavior. It went on from there to  
11      other sexual offending acts. There was mention of a 15- to  
12      16-year old male in his neighborhood. Mr. Carta said he  
13      wanted to -- he asked this guy to, if they could have oral  
14      sex and the guy declined. And so when he refused, Mr. Carta  
15      said he shot this man or boy with a BB gun.

16              And a month later the young male then approached  
17      him and asked him to engage in oral sex. And Mr. Carta  
18      denied that there was or saw that there was any force or  
19      coercion in this act and that he characterized them as  
20      having an ongoing relationship off and on over a five-year  
21      period.

22              He outlined at 21 he performed fellatio on a  
23      16-year old nephew on several occasions. And he said that  
24      this victim had his preferred body type which he  
25      characterized as young and thin. He denied there was any

1 force or coercion in that.

2 He went on to talk about when he was following the  
3 Grateful Dead around, he estimated about 28 years old he  
4 encountered a 13-year old male who he characterized as  
5 street wise and knowing what's going on. He said this child  
6 might have been messed up, like on some kind of drugs or  
7 alcohol. And he said he took advantage of the kid by  
8 offering him concert tickets in exchange for performing  
9 fellatio on that child.

10 He then questioned whether that kid's parents were  
11 in on it and whether they were maybe pimping the kid out to  
12 do this kind of act in exchange for some type of material  
13 item.

14 He also said there was another guy, another victim  
15 while following the Grateful Dead, he said that he  
16 encountered a 17- or 18-year old male who had passed out  
17 from substance use. And that Mr. Carta thought he had  
18 gotten signals from this guy that the guy wanted to engage  
19 in sexual contact. So while the guy was passed out,  
20 Mr. Carta said he began fondling him and masturbating  
21 himself and that the man woke up during this assault and  
22 yelled at Carta and Carta ran off.

23 There are sexual offending behaviors. He said that  
24 at 30 or 31 he encountered a 13-year old male and he said  
25 that this young guy came to his home or apartment and asked

1 if he could hang out. And once inside the house, he said  
2 the boy spontaneously began masturbating. And Mr. Carta  
3 said that he didn't do anything or believed that he had done  
4 anything to encourage this boy to do this. And that that  
5 started an ongoing sexual relationship with this young man  
6 over, he initially said two years and then he changed it and  
7 thought about it and said maybe it was over four years.

8 He described this boy as kind of a runaway who hung  
9 out where homeless people did. He said the boy was lonely.  
10 His parents were drug addicts. The young boy would come and  
11 go in and out of his life. He said they had sexual contact  
12 he estimated over 20 or 30 times.

13 **Q.** Was that with this 13-year old male?

14 **A.** Yes.

15 **Q.** Did he describe any Internet activity that he had with  
16 you?

17 **A.** He did. He said that he also would chat with young  
18 people to see if they wanted to meet for sex. And I think  
19 most of the time he said that this didn't happen because  
20 they were in far away areas, maybe they're in other states  
21 or something, but there were occasions where he met with  
22 minors.

23 **Q.** And did he give you the age of those minors?

24 **A.** Yes, he estimated that at 39 he chatted on the Internet  
25 with a 13-year male who propositioned him. This young male

1 propositioned Mr. Carta for sex so he reported. And that  
2 boy lived two towns over.

3 And that, this was another evidence of the  
4 distortion for me because he had this young boy who wanted  
5 to fellate him but he told the boy, you know, no, let's do  
6 that, let me do this to you. He described it, it's him  
7 providing pleasure for this young boy. That doing it the  
8 other way, if the young boy did it on the male, that could  
9 mess children up. And so he wanted him to be sure and think  
10 about that.

11 So that was another flag for me of those type of  
12 distortions that I'm thinking of that he doesn't see may be  
13 providing, what he considered providing pleasure or oral sex  
14 on this young boy, that that's problematic as well.

15 I think this is the child that he -- yeah, somehow  
16 he asked that 13-year old boy if he would be interested in  
17 participating with three-way sex with Mr. Carta's 17-year  
18 old sexual partner. And he said that that did occur.

19 **THE COURT:** Let's take a five-minute recess, okay.

20  
21 (Recess.)

22  
23 **THE COURT:** I am sorry to keep you waiting. I made  
24 the mistake of taking one phone call.

25 (Laughter.)

1           **THE COURT:** Go ahead. Sit down.

2           Go ahead.

3           **MS. STACEY:** Thank you, Your Honor.

4                       **JAMES MICHAEL WOOD, Resumed**

5                       **DIRECT EXAMINATION, (Cont'd.)**

6 BY MS. STACEY

7       **Q.** Dr. Wood, have you completed your answer about the  
8 sexual history that you discussed with Mr. Carta?

9       **A.** I don't believe we covered all the areas that came out  
10 during that psychosexual evaluation.

11       **Q.** Okay. So what would you like to add at this time?

12       **A.** Let me try to see where we picked up.

13       **Q.** You had last testified to the, I believe the Internet  
14 activity with a 13-year old male.

15       **A.** Right. He said there was Internet activity. And there  
16 was also, I was talking about the 13-year old boy in  
17 California.

18               And Mr. Carta said he convinced this boy to go  
19 over, back to Connecticut to the East Coast, possibly to  
20 live with him. And so that was important to me.

21               He also said that he posted ads on the Internet in  
22 which he was looking for teenagers to have relationships  
23 with and cruised message boards, chat rooms such as "Dads 4  
24 Sons."

25       **MR. GOLD:** Your Honor, the witness appears to be

1 reading his own report. I'd ask that he be asked to exhaust  
2 his memory before --

3 **THE COURT:** Okay. Try to tell us what you remember  
4 before you refresh your recollection.

5 **THE WITNESS:** Okay.

6 **A.** There were several teenagers, I remember a teenage,  
7 maybe a 16-year old girl and I'm thinking a teenage boy that  
8 he met over the Internet and met up to have sex with. I  
9 don't believe he had sex with the teenage girl or the boy in  
10 that instance.

11 **Q.** Okay. Now, are all these instances of sexual history,  
12 is that important to you as a treatment provider?

13 **A.** Yes.

14 **Q.** And why is that?

15 **A.** Well, it helped formulate my diagnosis that we were  
16 working towards.

17 **Q.** And did you also review Mr. Carta's history of  
18 masturbation and fantasies?

19 **A.** I did.

20 **Q.** Why did you do that?

21 **A.** That gets to the heart of the sexual interests that he  
22 had that would help with my diagnosis.

23 **Q.** And what did he tell you about his masturbatory practice  
24 and his fantasies?

25 **A.** That his primary sexual interest was 13- to 17-year old

1 males. And that the characteristics that he liked of those  
2 children were that they were fresh and innocent and virginal  
3 were his words.

4 Q. Did he discuss with you anything about child pornography  
5 being involved with his masturbation practices or his  
6 fantasies?

7 A. Yes. Prior to his incarceration it got to the point  
8 where he said it was very compulsive type behavior, that he  
9 was spending large amounts of time viewing child pornography  
10 and fantasizing, masturbating.

11 Q. How much time was he spending?

12 A. It was -- I don't remember the exact hours but it was a  
13 significant part of his day that he said he wasn't showering  
14 or going to work.

15 Q. Would looking at the report help you refresh your  
16 recollection?

17 A. Yes, it would.

18 He estimated two to three times a day looking at  
19 child pornography spending 12 to 14 hours on the computer.

20 Q. And did this 12- to 14-hour a day habit have any affect  
21 or result on him and his social history?

22 A. Yes, it kept him, if you are asking, it kept him from  
23 getting out and interacting with people in everyday life,  
24 working and personal hygiene.

25 Q. When you say personal hygiene, what do you mean?

1       **A.** Taking showers.

2       **Q.** Did this prevent him from taking a shower?

3       **A.** I guess he chose to view child pornography rather than  
4       doing other activities in life.

5       **Q.** Was Mr. Carta deterred from this child pornography  
6       activity on the Internet by the presence of law enforcement?

7       **A.** No, he said he wasn't.

8       **Q.** And did he tell you why he wasn't?

9       **A.** It came across to me that either he didn't think he  
10      would get caught because he had several different avenues  
11      that he thought he could evade detection and also he wrote I  
12      think in his personal history questionnaire that he didn't  
13      care.

14      **Q.** And was any other testing performed on Mr. Carta?

15      **A.** Yes, we gave him a battery of tests in that initial  
16      orientation assessment phase that was part of the  
17      psychosexual evaluation.

18      **Q.** And generally speaking what were the tests?

19      **A.** There is an intelligence test, an achievement test to  
20      look at reading and spelling levels, to be able to navigate  
21      the course of treatment, some personality assessment  
22      inventories, a sex specific test, multiphasic sex inventory.

23      **Q.** And were you given the results of the tests?

24      **A.** I was.

25      **Q.** And why were you given the results of the test?



1     **A.** Well, when you combined the information that I gathered  
2     in the history along with the test interpretation, that  
3     helps with your diagnostic formulation for the diagnosis.

4     **Q.** Did you interpret the tests that were actually performed  
5     on Mr. Carta?

6     **A.** I did.

7     **Q.** And what is it that you determined?

8     **A.** That when you combined that with his history they showed  
9     what, you could see the pattern in his life of a disregard  
10    for society's rules and expectations --

11           **MR. GOLD:** Objection, Your Honor. I think the  
12    question calls for expert opinion interpretation of these  
13    test results. I realize there is a line --

14           **THE COURT:** I am going to make this the line. I  
15    will sustain your objection.

16           **MS. STACEY:** Your Honor, may I ask he be allowed to  
17    testify as to what he interpreted the results of these tests  
18    and what his interpretations were is what I'm asking him to  
19    testify to.

20           **THE COURT:** He is only going to tell me that for my  
21    benefit supposedly and he is not an expert.

22           **MS. STACEY:** He does at the end of this make a  
23    diagnosis, Your Honor, and so this would --

24           **THE COURT:** I know, but you haven't qualified him  
25    as an expert. You haven't submitted him as an expert. He

1 is only doing this for me. It is -- I mean no disrespect  
2 but we don't care what he thinks in the abstract. We care  
3 what he thinks insofar as it might influence my decision.

4 **MS. STACEY:** Okay, Your Honor. I just ask, so he  
5 may testify to what he did as his treating physician though?

6 **THE COURT:** Yes.

7 **MR. GOLD:** Your Honor --

8 **THE COURT:** Well, he --

9 **MS. STACEY:** As his treating provider, treatment  
10 provider.

11 **THE COURT:** Yes.

12 BY MS. STACEY

13 **Q.** Now, as a treatment provider are the testing results  
14 important to you?

15 **A.** Yes.

16 **Q.** And why are they important to you?

17 **A.** Because you put them together with the history that I  
18 had gathered to help with the diagnosis that you're going to  
19 make, the treatment planning, the course of treatment and  
20 the program.

21 **Q.** And at the end of your psychosexual evaluation of  
22 Mr. Carta, did you make a diagnosis based on your  
23 observations of him at that time?

24 **MR. GOLD:** Objection, Your Honor.

25 **Q.** At that time?

1           **MR. GOLD:** At the time the witness was an intern.  
2 He wasn't even qualified to make a diagnosis.

3           **THE COURT:** Well, that goes to the weight of it.  
4 But we will let him testify. Go ahead.

5           **MR. GOLD:** We also say that, by the same token, a  
6 diagnosis is an expert opinion.

7           **THE COURT:** She is asking how he felt about it back  
8 then. I am going to let it in.

9           **A.** Yes, I did make a diagnosis.

10          **Q.** And what was your diagnosis at the time?

11          **A.** The primary sexual diagnosis was paraphilia not  
12 otherwise specified, hebephilia.

13          **Q.** And what is that?

14          **A.** It's the sexual attraction or interest in behaviors with  
15 teenagers right at the age of pubescence.

16          **Q.** And did you make any other diagnosis of Mr. Carta at the  
17 time?

18          **THE COURT:** When you say "the age of pubescence,"  
19 be specific. What are you talking about?

20          **THE WITNESS:** For him it was that he said he was  
21 sexually attracted to children who were in the midst of  
22 puberty so, are you looking for a specific age?

23          **THE COURT:** You are the one that used the  
24 expression I think. You said something.

25          **THE WITNESS:** Right. Well, what I based it on was

1 his attraction to the midst of puberty and he characterized  
2 13, 14, up to 17 years old.

3 **THE COURT:** All right.

4 BY MS. STACEY

5 **Q.** Did you make any other diagnosis of Mr. Carta at that  
6 time?

7 **A.** I did.

8 **Q.** And what else did you diagnose?

9 **A.** There was several on the substance abuse list, the  
10 cannabis dependence, hallucinogen dependence in remission,  
11 because he hadn't done that in several years before he came  
12 to prison. And then the personality, antisocial personality  
13 disorder and borderline personality traits.

14 **Q.** And did you memorialize those diagnoses in that sexual  
15 evaluation, psychosexual evaluation that's marked as  
16 Exhibit 5 -- 25?

17 **A.** I did.

18 **Q.** And as part of your duties with Mr. Carta, did you also  
19 develop a treatment plan for him?

20 **A.** I did.

21 **Q.** And what is a treatment plan?

22 **A.** It's kind of a road map or a goal for what treatment is  
23 going to look like where we identify problems and then what  
24 are the aims of treatment going to be, how we're going to go  
25 about satisfying relieving those problems that we have

1 identified.

2 Q. And, I'm sorry, before I leave the, before I leave the  
3 psychosexual evaluation again, did you diagnose him with any  
4 type of personality diagnosis?

5 A. Yes, the antisocial personality disorder and the  
6 borderline personality traits that I observed.

7 Q. Okay. And what did you base that on?

8 A. His history of violating -- there is multiple criteria  
9 in the DSM, the *Diagnostic and Statistical Manual*, but it's  
10 multiple rule violations, early onset of criminal activity,  
11 juvenile delinquency, irresponsibility, disregard for rules,  
12 irritability.

13 Q. And moving back, and I apologize, to the treatment plan,  
14 when did you develop a treatment plan with Mr. Carta?

15 A. I don't remember the date. It would be during those  
16 first few months of treatment in working with him, the fall  
17 to the winter of 2005.

18 Q. I'll ask you to turn to tab 22 on the binder that's  
19 there before you.

20 A. Okay.

21 Q. I ask you to review the document. Is that the treatment  
22 plan?

23 A. Yes, it is.

24 Q. Does that refresh your recollection about the date that  
25 you developed the treatment plan?

1       **A.** Yes, it does. It's dated January 20, 2006.

2       **Q.** And why is the treatment plan typed up on this document?

3       **A.** That's the format we used for all of the program  
4 participants and that we outline their diagnosis and their  
5 problems and the goals and interventions we're going to do.  
6 And then we actually sit down with the program participant  
7 and go over that with them so they have a road map for  
8 treatment.

9       **Q.** Did you type this up as part of your duties at FCI  
10 Butner?

11       **A.** Correct.

12       **Q.** And was it in the FCI Butner system?

13       **A.** Yes.

14       **Q.** And is it a true and accurate copy of the treatment plan  
15 you developed?

16       **A.** Yes.

17               **MS. STACEY:** And at this time I'd move for  
18 admission of the treatment plan as Exhibit 22.

19               **THE COURT:** Any objection?

20               **MR. GOLD:** No objection.

21               **THE COURT:** It comes in.

22               Is that January 20, '06?

23               **MS. STACEY:** Yes, Your Honor.

24               **(Government's Exhibit No. 22 received in evidence.)**

25       BY MS. STACEY

1 Q. Now, when you say you go through the different goals and  
2 stages, there is something listed as an acceptance of  
3 responsibility. Did Mr. Carta have any issues with  
4 acceptance of responsibility?

5 A. He was in the early phases I believe of accepting  
6 responsibility but he hadn't, I believe he hadn't  
7 participated long enough in treatment to fully accept the  
8 harmfulness of his behavior.

9 Q. And what about the second domain of the treatment plan,  
10 understanding his sexual deviance, did Mr. Carta have any  
11 issues with that?

12 A. Again, it was in and out, that I believe we would have a  
13 breakthrough and then it was like one step forward and two  
14 steps back.

15 Q. Did you note the problems in the report that Mr. Carta  
16 had?

17 A. On this report?

18 Q. Yes.

19 A. Yes.

20 Q. And are you able to remember some of the problems that  
21 Mr. Carta had in this area, of understanding his sexual  
22 deviance?

23 A. Yes.

24 Q. And what were they?

25 A. He would begin to recognize some of the harmful

1 behaviors he had but he didn't fully recognize the role he  
2 played in that, that, you know, he viewed the children as  
3 being able to make choices to engage in the sexual behavior  
4 with consent or willingly.

5 **Q.** And moving onto management of Mr. Carta's sexual arousal  
6 and his deviance, the third prong of the treatment plan, did  
7 he have any issues with that?

8 **A.** We really didn't get to address that because of where he  
9 was in treatment when he left.

10 **Q.** What is that, the management of sexual arousal and  
11 deviance generally, what is that there for?

12 **THE COURT:** Arousal?

13 **MS. STACEY:** I'm sorry, sexual arousal and  
14 deviance.

15 **A.** For some of the men in the treatment program, they  
16 report problems managing their sexual arousal. They're  
17 fantasizing and masturbating like to an excessive extent.  
18 They feel like they can't control their fantasies. And we  
19 will either have behavioral interventions that we can do to  
20 help them with that or they can see the psychiatrist.  
21 They're starting to use medication to help control that.

22 **Q.** The fourth part of the treatment plan you have listed,  
23 victim impact and empathy problems, did Mr. Carta have any  
24 issues there?

25 **A.** Yes, he did.



1 Q. And what were they?

2 A. It speaks to that, the previous problem I was  
3 discussing, his understanding the full impact that his  
4 behavior had on the children. And so I think he was  
5 beginning to understand that this was problematic but then  
6 in the next breath he would start to defend why what he did  
7 was okay in his perspective.

8 Q. Did Mr. Carta meet any of the goals set out in this  
9 treatment plan?

10 A. No.

11 Q. And why is that?

12 A. Because he discontinued treatment voluntarily.

13 Q. And I ask you to look at the last page of Exhibit 22.  
14 Did both you and Mr. Carta sign that treatment plan?

15 A. We did.

16 Q. And what did the signatures signify?

17 A. That we went over the problems and the interventions  
18 together.

19 Q. Now, moving to your treatment of Mr. Carta, during your  
20 treatment of him, did he encounter any issues during  
21 treatment?

22 A. He did. It seemed to be a continuous problem from the  
23 beginning.

24 Q. And what issues did he encounter?

25 A. There were minor things like he complained that not

1 being able to smoke was a problem in the treatment. I think  
2 at that time the Bureau had just instituted a no smoking  
3 policy and that was difficult on the inmates.

4 He verbalized concern that he might not have the  
5 intelligence or the memory to successfully complete the  
6 program.

7 And the more problematic aspect was this ongoing  
8 thing that I documented of getting confronted for his  
9 interactions with the younger program participants or some  
10 of the newer younger program participants.

11 **Q.** And when you say staying away from the newer younger  
12 program participants, why is that a problem?

13 **A.** It was, it began -- he was getting feedback from some of  
14 the community members that -- and, again, this is a  
15 therapeutic community where you're kind of in treatment  
16 throughout the day, even when you're not sitting in the room  
17 with the psychologists, some of the more experienced program  
18 participants are with you all the time. And they're giving  
19 you feedback about their observations.

20 And so it began that these more experienced program  
21 participants started confronting Mr. Carta that he was  
22 spending an unusual amount of time in interview and focus  
23 with these new, there was a group of new young program, I  
24 think they were like 19 to 22, and they were young  
25 appearing.

1           And then, and they saw that he was spending a lot  
2           of attention on them. And so they started giving him  
3           feedback about that. And then that started a spiral of  
4           problems throughout the rest of the treatment program.

5           **Q.** And did you counsel Mr. Carta about this problem,  
6           hanging out with the younger members?

7           **A.** We did. And, you know, it began as just a treatment  
8           issue, hey, we're getting reports on this, what do you think  
9           about this, getting this feedback about it. And he was back  
10          and forth about where he was with that. First denying that  
11          there was any problem, that that was part of the treatment  
12          philosophy, that each person was going to give feedback to  
13          others.

14          And so we started saying, well, why is it just this  
15          group, are you giving feedback to older program  
16          participants. And he had some issues saying that he didn't  
17          relate to them or they went to bed early and these other  
18          people are more accessible.

19          Over time it got to the point where I would observe  
20          when I was walking through that he would be at tables or in  
21          the courtyard with some of these same guys that he was  
22          getting confronted for. And he eventually admitted that he  
23          was sexually attracted to these guys. So that he was  
24          spending time with them, mentoring them but it was also  
25          serving a dual or underlying purpose of sexual attraction.

1 Q. And as a result of that, what, if anything, did you do?

2 A. Well, we talked about it for an ongoing period, you  
3 know, is this a problem. We tried to address the least  
4 restrictive issues like in the community, him coming forth  
5 in the community and admitting that this has been going on.  
6 Getting feedback from the community or help or advice.

7 Eventually it got to the point where he was wanting  
8 to quit the program. He just couldn't tolerate the  
9 confrontation about this issue. He saw these people as  
10 friends. He didn't want to participate if it was going to  
11 get to this level that he couldn't interact with them.

12 So Dr. Hernandez is the program director and at  
13 this point Mr. Carta was wanting to quit. So the three of  
14 us met to talk about that. And Mr. Carta changed his mind.  
15 He said he needed help with changing his behavior and not  
16 hanging out with this younger group of guys. And  
17 Dr. Hernandez put it back on Mr. Carta to come up with some  
18 type of alternative or restriction that would help him  
19 progress in treatment and not hang around these guys.

20 And so over the next couple days or week I think it  
21 was Mr. Carta's idea to say he wasn't supposed to interact  
22 with anybody below what they call a phase four. Phase four  
23 is the most experienced group of guys. But it also had a  
24 dual purpose of none of the young guys who were a problem  
25 for him were in that phase so it kept him away from that

1 group.

2 Q. And why did Dr. Hernandez put it back on Mr. Carta to  
3 make the restriction?

4 A. It was a way to keep, hopefully keep him invested in  
5 treatment, that we weren't going to outline rules that  
6 dictate for someone with Mr. Carta's personality style to  
7 want to buck the system. If he was invested in helping to  
8 come up with the solution, he might be more invested in  
9 helping to continue on.

10 Q. Did you ever discuss with Mr. Carta whether he was  
11 grooming members of the Sex Offender Treatment Program?

12 A. That did come up.

13 Q. And what was Mr. Carta's response?

14 A. Like I said, it was back and forth about whether it was  
15 a problem or not. At one point he did admit that he was  
16 interacting with these guys because he was sexually aroused  
17 to them. And he was operating in this mentoring type role.

18 Q. And what is grooming, Dr. Wood?

19 A. It is a type of behavior that is common with sex  
20 offenders that they build trust or rapport with, in the  
21 definition of a sexual offense, to build up a relationship  
22 or trust to let a victim's guard down so that they don't  
23 know maybe what's happening.

24 Q. Did Mr. Carta ever try to quit the Sex Offender  
25 Treatment Program?

1 A. Multiple times.

2 Q. And eventually, you testified eventually Mr. Carta quit;  
3 is that correct?

4 A. Correct.

5 Q. How did you know that?

6 A. I don't remember, either he put a note -- I guess it  
7 might have started when he put a note on my door. He came  
8 to see me and said that he was done. And we had gone  
9 through this multiple times, multiple other times but he was  
10 able to talk about it and we were able to process, you know,  
11 what the problems were and maybe some strategies to keep him  
12 in. But I think the last time he said that he didn't want  
13 to talk about the reasons why he was leaving. It was pretty  
14 final to me.

15 Q. I'll ask you to turn to Exhibit 21 in the book in front  
16 of you, tab 21.

17 A. Okay.

18 Q. And do recognize that document?

19 A. Can you tell me which one you're referring to? I'm  
20 having problems here.

21 Q. I'm sorry. It's PDS note dated January 31, 2006.

22 A. Yes. Okay.

23 Q. Do you recognize the document?

24 A. Yes.

25 Q. What is the document?

1     **A.** It's an entry note that when I document an interaction  
2     with any of the inmates in the program. And that's one  
3     where I discuss he was waiting on me upon my arrival to the  
4     unit that morning and saying that he couldn't take treatment  
5     and was wanting to quit.

6     **Q.** Okay. And there are other -- are there other things  
7     other than that note in this report? Strike that.

8             Did you make this report as part of your duties as  
9     the psycho doctoral intern?

10    **A.** I did.

11    **Q.** And is it a true and accurate copy of the notes you made  
12    about his wanting to quit the Sex Offender Treatment  
13    Program?

14    **A.** Yes.

15             **MS. STACEY:** I move to admit this as Exhibit 21.

16             **MR. GOLD:** Same objection, Your Honor.

17             **THE COURT:** Overruled.

18             **(Government's Exhibit No. 21 received in evidence.)**

19    BY MS. STACEY

20    **Q.** After he told you that he wanted to quit, what, if  
21    anything, did you do?

22             And that's on January 31st, 2006.

23    **A.** Okay. If this was the final time that he said he was  
24    going to quit, I would have talked to my supervisors and  
25    they had me write a memo that he was going to leave the

1 program or move out of the Maryland Unit to another unit.

2 Q. Well, at least on January 31, 2006, what were the  
3 reasons that Mr. Carta was giving you for wanting to quit  
4 the Sex Offender Treatment Program?

5 A. I think it would have been the ongoing problem with the  
6 restrictions placed on him for hanging out with the younger  
7 program participants that he was getting confronted for and  
8 the challenge about that.

9 Q. I ask you to look at tab twenty in the book that you  
10 have in front of you.

11 Is that a treatment note dated February 14, 2006?

12 A. Yes, it is.

13 Q. And at that time were you also discussing Mr. Carta  
14 wanting to quit the Sex Offender Treatment Program?

15 A. This is the note where it looked like he was coming  
16 around getting on board with treatment. And he was going to  
17 tell the community that he was going to be placed on  
18 restriction, that he had trust in the staff and it was  
19 looking promising on this day it appears.

20 Q. And when you say announce the restriction, what do you  
21 mean?

22 A. What is the restriction?

23 Q. Yes.

24 A. It was that I described, that he wasn't going to  
25 interact with any lower phased people in the treatment



1 program, that he was just going to interact with phase four.

2 Q. And if you could just back up a little.

3 A. Okay, sorry.

4 Q. I don't know if that's you or the system.

5 A. Yes, I think I got closer.

6 Q. Okay.

7 THE COURT: Oh, you are the one that is making that  
8 noise.

9 THE WITNESS: Sorry.

10 (Laughter.)

11 THE COURT: We are blaming you anyway.

12 THE WITNESS: I'm moving in.

13 (Laughter.)

14 BY MS. STACEY

15 Q. So looking at Exhibit 21 where Mr. Carta is explaining  
16 to you why he wants to quit the Sex Offender Treatment  
17 Program, did he offer anything other than the restriction as  
18 reasons?

19 A. Are we still looking at the February 14th document?

20 Q. I'm sorry, January 31, 2006.

21 A. Okay. Yes, he did. He said that he didn't think he had  
22 what it took to complete treatment.

23 Q. And did that mean anything to you as his treatment  
24 provider?

25 A. That he felt defeated and frustrated and overwhelmed.

1 Q. And I'm going to ask you to go to Exhibit 27, an exhibit  
2 that is in evidence. And it's midway through, Bates No.  
3 1071.

4 A. Okay.

5 Right, yes.

6 Q. Do you recognize that document?

7 A. Yes.

8 Q. And what is it?

9 A. That's what they call a copout. It's a written  
10 communication that he left for me saying that he wanted to  
11 quit -- yes, this would be the last time he communicated  
12 that he wanted to quit treatment. This was the final  
13 decision.

14 Q. And how do you know it was the final decision?

15 A. When he told me I do not wish to talk about the  
16 decision, my mind is made up, I felt like we had gone  
17 through so many times and navigated being able to stay in  
18 but this time he didn't even want to talk about it.

19 Q. And is that --

20 A. It had been building.

21 Q. I'm sorry.

22 A. That's all right.

23 Q. Is that a true and accurate copy of the document that  
24 you received?

25 A. Yes.

1           **MS. STACEY:** I would move for admission of that at  
2 this time as the final portion of Exhibit 27.

3           **THE COURT:** It comes in.

4           **(Government's Exhibit No. 27A received in**  
5 **evidence.)**

6 BY MS. STACEY

7           **Q.** If someone wants to quit the Sex Offender Treatment  
8 Program, may they?

9           **A.** Sure, yes, it's a voluntary program.

10          **Q.** Is there anything that you do to help the decision, to  
11 help a person make that decision?

12          **A.** Well, what I experienced with Mr. Carta was that he  
13 received much support. He was told to talk to other people  
14 in the community, more experienced people in the community,  
15 bring his problems to the community, talk about it in his  
16 process group. He talked about it with me so I think there  
17 was much -- we went and talked to Dr. Hernandez. There was  
18 much support.

19               And we definitely wanted, especially someone like  
20 Mr. Carta that had a history of acting impulsively and  
21 getting mad and then regretting his decision, that, you  
22 know, we wanted him to take time to think about it.

23          **Q.** How long had he been in treatment when he quit?

24          **A.** Approximately seven months.

25          **Q.** And what phase of treatment was he in when he quit?

1       **A.** The treatment phase, that third stage.

2       **Q.** And the restriction you talked about, about him not  
3       being with the younger members, how long had that  
4       restriction been in place when he quit? For the last time?

5       **A.** I don't remember specifically. I mean, one, two weeks.  
6       It was a couple weeks I think.

7       **Q.** Okay. And did you write any memos as a result of his  
8       quitting the program?

9       **A.** I did. It was standard procedure to write a memo to  
10      notify the different directors, the security people, unit  
11      team, that he was going to need to transition or move out of  
12      the Sex Offender Treatment Housing Unit into a different  
13      unit.

14      **Q.** I'll ask you to look at Exhibit 19 in the book before  
15      you. It's a memorandum dated March 2, 2006.

16      **A.** Yes.

17      **Q.** Is that the memo that you wrote?

18      **A.** It is.

19      **Q.** And is it a true and accurate copy of the memo that you  
20      wrote?

21      **A.** It is.

22               **MS. STACEY:** At this time, Your Honor, I would move  
23      to admit this into evidence as Exhibit 19.

24               **MR. GOLD:** No objection.

25               **THE COURT:** It comes in.

(Government's Exhibit No. 19 received in evidence.)

BY MS. STACEY

Q. Other than the memo, were you required to write anything else about Mr. Carta's leaving the Sex Offender Treatment Program?

A. Yes, it was the common procedure for people who quit or who successfully completed the program, for the individual treatment provider to write a discharge report.

Q. Okay. If you would turn to Exhibit 27.

A. Okay.

Q. Is that top page, is that your discharge report?

A. I'm again having problems.

Q. That's all right. Exhibit 27, the very first page.

MS. STACEY: May I assist, Your Honor?

THE COURT: Yes.

(Pause in proceedings.)

BY MS. STACEY

Q. Is that your discharge report?

A. It is.

Q. And did you author that report?

A. I'm sorry, did I author?

Q. Did you author that report?

A. Yes.

Q. Is your signature on that report?

A. It should be.

1 Yes.

2 Q. And did your supervisor also sign off on the discharge  
3 report?

4 A. He did.

5 Q. And was that Dr. Melin?

6 A. Melin, yes.

7 Q. M-E-L-I-N?

8 A. Correct.

9 Q. And did you prepare this report as part of your duties  
10 as a psych doctoral intern?

11 A. I did.

12 Q. And at this time -- is it a true and accurate copy of  
13 the report you completed?

14 A. Yes.

15 MS. STACEY: I'd move for admission of the report  
16 in Exhibit 27 as well, Your Honor?

17 MR. GOLD: The same objection, Your Honor.

18 THE COURT: Okay.

19 MR. GOLD: It contains expert conclusions.

20 THE COURT: Your objection is noted. Overruled.

21 (Government's Exhibit No. 27 received in evidence.)

22 BY MS. STACEY

23 Q. What is a discharge report?

24 A. The two main purposes for it are to document the  
25 progress or lack of progress in treatment for future

1 treatment providers. And also it's sent to the  
2 probation/parole supervising officer for them to better  
3 understand the offender they're going to monitor.

4 Q. During the course of his treatment with you, did  
5 Mr. Carta ever express any regrets to you?

6 A. During the course of treatment? Yes, at the end he did  
7 say that he regretted having told me so much about his  
8 history.

9 Q. And at the time that you treated Mr. Carta, what was his  
10 sex offending pattern?

11 A. What I had come to the conclusion of, that I was going  
12 to focus treatment on was the -- someone mentioned here  
13 earlier the power imbalance of his relationships. And he  
14 had described multiple instances of befriending kind of hard  
15 luck kids who were at risk and came from poor homes or had  
16 poor supervision or drug and alcohol runaway type of  
17 problems, and had been taking them in, mentoring them,  
18 providing them with food or shelter or a living situation  
19 and engaging in sexual contact with them.

20 Q. And you testified that the discharge report also goes to  
21 Probation, the Bureau of Prisons and all these people. Did  
22 you actually send his report to Probation?

23 A. I did.

24 Q. And did you conduct a risk assessment as part of  
25 Mr. Carta's discharge report?

1       **A.** I did.

2       **Q.** And what was your risk assessment of Mr. Carta at the  
3 time of the report?

4               **MR. GOLD:** Objection, Your Honor.

5               **THE COURT:** I am going to let it in.

6       **A.** We looked at the identified risk factors using the  
7 Static-99 and other measures and had a high risk of future  
8 recidivism.

9       **Q.** And this report, this discharge report also lists a  
10 number of recommendations for community supervision within  
11 it?

12       **A.** Correct.

13       **Q.** Why is that there?

14       **A.** I believe that's again helpful to the, from what the  
15 staff had told me in their experiences, that's helpful to  
16 the supervising probation/parole officer.

17       **Q.** Do these recommendations guarantee that Mr. Carta will  
18 not reoffend if released?

19       **A.** No. No.

20               **MS. STACEY:** I have nothing further at this time.

21               **THE COURT:** Okay. It is good timing. We will take  
22 the one o'clock recess. And why don't we come back at two.  
23 Usually we come back at 2:15. We will get an extra few  
24 minutes in. I have a physical therapy appointment later  
25 this afternoon so I will probably leave a little early.



1                   So we will see you at two o'clock. Okay.

2  
3                   (Luncheon recess.)  
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**AFTERNOON PROCEEDINGS**

**THE CLERK:** All rise for the Honorable Court.

**THE COURT:** Good afternoon, everybody.

**THE CLERK:** You may be seated.

(Pause in proceedings.)

**THE COURT:** Mr. Gold, are you ready?

**MR. GOLD:** May I proceed?

**THE COURT:** Please.

**CROSS-EXAMINATION**

BY MR. GOLD

**Q.** Good afternoon, Dr. Wood.

**A.** Good afternoon.

**Q.** Dr. Wood, you currently work for the Arkansas Department of Correction?

**A.** Correct.

**Q.** And we talked a little bit about this last night but you have been continuously employed with them since 2000?

**A.** Correct.

**Q.** But that was while you were getting a degree in psychology?

**A.** Correct.

**Q.** How does that work?

**A.** When I got the job in 2000 in Arkansas I was licensed, in Arkansas you can get licensed at the master's level of a psychological examiner, so I was employed until the time I

1 got my degree at that level under supervision of a  
2 psychologist.

3 Q. So at the time that you did this internship you were a  
4 master's level, what did you call it?

5 A. A psychological -- I was licensed in Arkansas as a  
6 psychological examiner but working in North Carolina I was a  
7 predoctoral psychology intern.

8 Q. Predoctoral psychology intern?

9 A. Correct.

10 Q. Now, where did you take, where were you taking your Ph.D  
11 courses?

12 A. Memphis, University of Memphis.

13 Q. And at the University of Memphis where in your career as  
14 a Ph.D candidate student did this internship take place?

15 A. You complete your internship in the last year of your  
16 graduate studies so after you completed the course work on  
17 campus, you -- most people leave to another site to do their  
18 one-year internship.

19 Q. And your one-year internship was at Butner, North  
20 Carolina?

21 A. Correct.

22 Q. Now, only half of that internship was with the Sex  
23 Offender Treatment Program?

24 A. Correct.

25 Q. There was another forensic psychological program there

1 that you also participated in?

2 A. Right, the FMC, the hospital.

3 Q. Now, are you a licensed psychologist now?

4 A. In Arkansas, yes.

5 Q. And since when have you been a licensed psychologist in  
6 Arkansas?

7 A. Licensed in October, I think it was October 2007.

8 Q. Now, in order to be licensed you need to pass a  
9 licensing exam of some kind; right?

10 A. Correct.

11 Q. Now, you did not make the cutoff score for that  
12 licensing exam; is that right?

13 MS. STACEY: Objection.

14 THE COURT: I don't understand the question.

15 BY MR. GOLD

16 Q. Well, did you pass that licensing exam?

17 A. I did.

18 Q. Well, did the -- did you have to be specially moved into  
19 Arkansas, to be licensed in Arkansas by another  
20 psychologist?

21 A. I don't understand your question.

22 Q. Well, did a licensing board need to have you, your score  
23 rounded up --

24 A. Yes, that's correct.

25 Q. So it was below the passing grade until they rounded it

1 up?

2 **A.** Correct. I took the test at the master's level before  
3 my doctoral program and made the score where they round it  
4 up for the psychologist when I got that degree.

5 **Q.** I see. So you didn't have to take it again?

6 **A.** Correct.

7 **Q.** Now --

8 **THE COURT:** I take it they didn't just do that for  
9 you, that was the process?

10 **THE WITNESS:** Yes, sir, from what I understand.

11 BY MR. GOLD

12 **Q.** Well, do you know that for a fact, whether some people  
13 have to take the exam again?

14 **A.** I don't know their process.

15 **Q.** Now, you have been interested in forensics for awhile;  
16 right?

17 **A.** Correct.

18 **Q.** Now, as a student at the University of Memphis, did you  
19 take courses relating to sex offending generally?

20 **A.** There was one specific course that had a heavy emphasis  
21 in sex offending, yes.

22 **Q.** All right. It was an emphasis in sex offending. What  
23 was the title of the course?

24 **A.** I think it was "Counseling sexually victimized children  
25 and their families."

1 Q. I see. So it wasn't looking at the behavior of sex  
2 offenders only, it was focused on victims of sexual abuse?

3 A. Throughout the continuum of the course we did -- I think  
4 the emphasis was more heavily on offenders but, yes, we did  
5 talk about sexually victimized children and their families  
6 and the whole gambit.

7 Q. And that was a one-semester course?

8 A. Correct.

9 Q. Was there a paper at the end of that course?

10 A. Yes.

11 Q. Now, did you have any experience treating people as a  
12 student?

13 A. Yes.

14 Q. And where did that treatment experience take place?

15 A. The University of Tennessee Health Science Center.  
16 There is a Special Problems Unit. Dr. Bill Murphy was my  
17 supervisor.

18 Q. And when did -- how long did you do it?

19 A. That was a semester-long practicum placement, that I was  
20 doing the treatment and then there was several periods that  
21 I worked on research, grant-funded research as a data  
22 collector.

23 Q. But actual experience treating individuals?

24 A. That one semester.

25 Q. And is there a -- do people in the psychology field talk

1 in terms of contact hours?

2 **A.** Yes, we did keep contact hours as -- you keep that  
3 record so when you apply to internships, you can give them  
4 some sense of how much experience you have in the field.

5 **Q.** And how many contact hours did you amass with sex  
6 offenders generally?

7 **A.** I don't remember. I had that listed out on my vitae. I  
8 think you have a copy of that. I don't remember off the top  
9 of my head.

10 **Q.** Well, how many sex offenders do you remember that you  
11 treated?

12 **A.** That semester they tried to give me a diversity of  
13 experience. I worked with, specifically I recall a child  
14 with sexual behavior problems, an adolescent, and then I did  
15 weekly group therapy with Dr. Murphy for that semester.  
16 With adult men, I'm sorry.

17 **Q.** And when you say you did weekly therapy, what did that  
18 entail?

19 **A.** Sitting in a group of men who had -- outpatient who had  
20 been convicted for sex offenses and they were participating  
21 in group treatment, like we did at the SOTP, to help them  
22 manage their sexual deviance and prevent future recidivism.

23 **Q.** Did you meet with the men in these groups individually  
24 one on one?

25 **A.** They did, I did have -- I don't remember if there were

1 any men from that group where I did the psychosexual  
2 evaluation but they did give me experience with doing that  
3 initial psychosexual evaluation with an adult man or two.

4 Q. I just meant, so part of this semester-long experience  
5 was sitting in a group with -- the name of the doctor is?

6 A. Murphy.

7 Q. Dr. Murphy?

8 A. Yes.

9 Q. And that was once a week that that group met?

10 A. Correct.

11 Q. Now, did you meet with any of those men individually?

12 A. I don't believe so, no.

13 Q. Did Dr. Murphy?

14 A. I don't know.

15 Q. Now, did you have course work with Dr. Murphy in  
16 addition to doing the treatment during this semester?

17 A. He supervised me. I would go in for supervision  
18 feedback sessions. And I also, I'm not sure if you're  
19 asking but I used data from his clinic for my dissertation.  
20 He was on my dissertation committee.

21 Q. Now, your dissertation was about some research question.  
22 Was it about treating these men?

23 A. No.

24 Q. Now, so coming into this internship, you had to apply  
25 for it; right?



1       **A.**   Correct.

2       **Q.**   And you expressed interest in this particular program?

3       **A.**   Yes.

4       **Q.**   And you interviewed with some people and said you had  
5       interest in it?

6       **A.**   Correct.

7       **Q.**   And so the interest that you had was expressed in part  
8       by this one-semester treatment experience?

9       **A.**   Yes.

10      **Q.**   And also the one-semester class that you took?

11      **A.**   Correct.

12      **Q.**   Now, were you given any reading material when you  
13      started? You told me last night that you were given a  
14      binder.

15      **A.**   Mm-hmm. Yes, two binders of articles from the field.

16      **Q.**   And I don't mean to out you here but --

17      **A.**   I know where you're going.

18      **Q.**   -- you don't remember how much you read?

19      **A.**   I thought that was coming.

20                I don't think I read every article in there. I  
21      cannot say that. But I tried to read most of them.

22      **Q.**   So coming into this experience, how much one-on-one  
23      treatment experience had you actually had as a doctoral  
24      student?

25      **A.**   The treatment experience, the main treatment experience

1 with sex offenders would be that semester with Dr. Murphy in  
2 my doctoral program.

3 Q. And how many patients was that? How many people?

4 A. I can give you an estimate. I think that's like 2003 so  
5 my memory has become a little fuzzy. But, you know, I had  
6 the men in the group which was maybe five to seven.

7 Q. I guess what we're trying to get at is this: How much  
8 experience doing one-on-one counseling?

9 A. Right, the one-on-one counseling in Dr. Murphy's clinic  
10 was with the child and adolescent. The group was the  
11 primary modality for treatment.

12 Q. And so it's one child and one adolescent?

13 A. Correct.

14 Q. And no adults?

15 A. For individual therapy, no.

16 Q. So did they just throw you in the deep end, you were  
17 given a case load when you got there?

18 MS. STACEY: Objection.

19 THE COURT: Help us out. Be a little more  
20 specific.

21 BY MR. GOLD

22 Q. When you got there, how did it work? Did they give you  
23 a case load or --

24 A. Yeah, we did I think a two-week orientation, the general  
25 correctional principles in how to navigate the unit. And

1 then they gave us binders of reading material and oriented  
2 us to the process.

3 They gave us a case load of five individual  
4 clients, like Mr. Carta was one, that we were going to be  
5 doing the psychosexual evaluation for and seeing for  
6 one-on-one therapy. They assigned us our psycho-educational  
7 groups. And I was assigned to process group with different  
8 supervisors.

9 Q. Now, that two-week orientation, you just mentioned this  
10 but just to be clear, that was about being an employee of  
11 the Bureau of Prisons; right?

12 A. Correct. It was open to all the new employees.

13 Q. And it wasn't anything specific to treating people at  
14 the Butner Treatment Program?

15 A. Correct.

16 Q. And then you were given a case load of five new, five  
17 new inmates; right?

18 A. Yes.

19 Q. Now, when you talk about the people in the program, do  
20 you call them inmates or do you call them patients?

21 A. We kind of refer to them in all ways. Not patients but  
22 inmates, program participants, I think those were the two  
23 main terms used.

24 Q. So coming into this you had the experience treating the  
25 adolescent and the child and no experience treating adult

1 sex offenders in similar situations; right?

2 A. I felt I did have experience in treatment with adult,  
3 adults.

4 Q. Adult but not adult sex offenders; right?

5 A. Well, I also felt like I had experience with adult --

6 Q. Because you were also participating in Dr. Murphy's  
7 group?

8 A. Right. Right, yes.

9 Q. Now, did you have a supervisor at Butner?

10 A. Yes.

11 Q. And who was that person?

12 A. Like I explained, I had multiple supervisors. For the  
13 overall internship and in each rotation for each kind of  
14 project you would work on from writing the evaluations to  
15 therapy, they differed.

16 Q. But you had two main supervisors; right?

17 A. Correct.

18 Q. One for the SOTP, which is the Sex Offender Treatment  
19 Program, and one for general psychological stuff; is that a  
20 good way to characterize it?

21 A. Really I had two in the Sex Offender Treatment Program,  
22 one in Dr. Melin was for the report writing and then  
23 Dr. Fraser was also in that. So for issues as a SOTP  
24 psychologist, she was there for all of my quote/unquote  
25 therapy hours and interactions I was having.

1           And then one day a week we did get out on the  
2       compound for other things and so she handled it if there  
3       were other questions in other areas too.

4       Q. Now, did -- so everything that you wrote was signed off  
5       on; right?

6       A. Yes, I believe so.

7       Q. So the reports that you wrote, they were reviewed by a  
8       supervisor and then signed off on?

9       A. Yes.

10      Q. And the notes that you were writing, the detailed notes  
11      that you were keeping were presumably reviewed by a  
12      supervisor?

13      A. That was my hesitancy. I think the computer -- I would  
14      enter them in the computer program and I believe they had to  
15      accept them before they were in there. I don't know exactly  
16      how that process worked for the computer program.

17      Q. So about how many men are in Butner, if you recall, or  
18      were at the time?

19      A. I was thinking --

20           **THE COURT:** How many men what?

21           **MR. GOLD:** Were at, the name of the program,  
22      Butner, were at Butner.

23           **THE COURT:** Okay.

24      A. In the Sex Offender Treatment Program I think it was  
25      between a hundred and a hundred twenty.

1 Q. And you had a case load of five?

2 A. I believe so.

3 Q. And so how long is the program?

4 A. I think the average is about 18 months but they say it's  
5 more task based than time based so I don't think there is an  
6 actual time criteria.

7 Q. But it's generally understood to be about 18 months?

8 A. I believe so.

9 Q. And so, now, when you are assigned -- well, let me ask  
10 you this: Are all new men in the program assigned interns?

11 A. I don't think that's their practice. I was there for,  
12 you know, a six-month period so I wasn't privy to all the  
13 workings of the program. But there was, you know five, six,  
14 seven psychologists in there. And they also had new guys  
15 that came in on their case loads so it wasn't always the new  
16 guy went to an intern.

17 Q. So some guys had psychologists --

18 A. Correct.

19 Q. -- treating them?

20 A. Correct.

21 Q. Doing the same work that you did?

22 A. Yes.

23 Q. And some people had an intern if there was an intern  
24 around?

25 A. Right.

1 Q. Now, have you ever testified in a proceeding like this  
2 before?

3 A. Civil commitment?

4 Q. Yes.

5 A. No.

6 Q. Either as an expert or as a treater?

7 A. No.

8 Q. So you got Mr. Carta as part of your case load?

9 A. Right.

10 Q. And you had an initial meeting with him?

11 A. Yes.

12 Q. Now, did they give you a standard thing to say to the  
13 new men on your case load?

14 A. I don't think so.

15 Q. So you just sort of played it by ear when you had that  
16 initial meeting or how did you know what to say to  
17 Mr. Carta?

18 A. Well, I had much training in different types of therapy.  
19 And so you generalize that from working in other settings  
20 with people with other kinds of problems so how to get  
21 rapport built and how to talk about informed consent and how  
22 to get into people's motivation for change and, you know, so  
23 it's based on my experience and training.

24 Q. Now, you mentioned the word "rapport." Is it important  
25 to build a rapport with a program participant?

1       **A.** Absolutely.

2       **Q.** And do you feel that you were successful in building a  
3       rapport with your case load generally?

4       **A.** Yes.

5       **Q.** And with Mr. Carta?

6       **A.** Yes.

7       **Q.** Now, when you say "informed consent," what do you mean?

8       **A.** What I testified earlier this morning about the limits  
9       of confidentiality that the mandated reporting, if there is  
10      an identified victim that they choose they want to report,  
11      that -- we talked about the Bureau's computer system, how  
12      other people in the system weren't supposed to have access.  
13      But you can't ultimately, you know, say for sure that  
14      they -- that an officer in some other unit can access  
15      records.

16               I had asked my supervisors, you know, how to  
17      explain that to people because I didn't know either. So  
18      they had guided me how to inform about that aspect.

19      **Q.** And so, but can you tell us in some sense what you told  
20      Mr. Carta or the men about disclosing their past?

21      **A.** Yes.

22               **THE COURT:** Disclosing their what?

23               **MR. GOLD:** About disclosing their pasts.

24      **A.** Essentially I would, I was telling them that it was  
25      important for them to come clean about everything that they



1 had done because I knew that the end result of the  
2 treatment, they were needing to pass a polygraph exam about  
3 being truthful and honest. And I also tried to impart on  
4 them that, you know, they're kind of at that rock bottom  
5 stage, sitting in federal prison, that this was a really  
6 well-known and respected treatment program, take advantage  
7 of it while you're here.

8 That if you had to get out in the community, you're  
9 not going to get that level of intensity and expertise for  
10 the most part. You have to pay money. So I was trying to,  
11 you know, really engage them and get them invested in  
12 treatment.

13 Q. And encourage them to be as full and forthcoming as they  
14 could?

15 A. Yes.

16 Q. Now, Doctor, Mr. Carta complained often about memory  
17 trouble; didn't he?

18 A. Yes. True.

19 Q. And he had this history which he disclosed to you of  
20 drug abuse; right?

21 A. Right.

22 Q. And he brought it up so much that you went to your  
23 supervisors and asked whether memory testing might be  
24 appropriate?

25 A. Yes.

1 Q. And then you did it?

2 A. Right.

3 Q. I think what I get from the records is there were kind  
4 of two reasons there, one to put the issue to rest?

5 A. Right.

6 Q. And, two, to see if there were some memory problems?

7 A. Correct.

8 Q. Because sometimes his memory seemed fine?

9 A. Yes.

10 Q. Right. And that testing did reveal below average,  
11 average on different, different types of memory that you can  
12 have; right?

13 A. Yes.

14 Q. Had you, by the way, done any of those memory tests  
15 before?

16 A. Yes.

17 Q. You had in your prior clinical experience?

18 A. Yes, when I worked licensed in Arkansas with my master's  
19 degree, I worked at a neuro rehab with people with brain  
20 injuries and routinely gave them a test like that for the  
21 neuropsychologist.

22 Q. So a similar test is what you gave Mr. Carta?

23 A. Correct.

24 Q. And Mr. Carta was complaining very early on about these  
25 memory problems; right?

1       **A.** He did.

2       **Q.** And what did you say to Mr. Carta in the context of his  
3 disclosing things when he said he didn't remember  
4 everything? Do you remember?

5       **A.** No, I don't.

6       **Q.** Do you recall telling Mr. Carta that if he was in doubt  
7 about, for example, the number of images that he had, he  
8 should round up?

9       **A.** No.

10               **MS. STACEY:** Objection.

11               **THE COURT:** What is the objection?

12               **MS. STACEY:** It's hearsay. If he wants to show him  
13 a document to refresh his recollection.

14               **THE COURT:** No, it is cross-examination. Go ahead.

15               **THE WITNESS:** Answer the question?

16               **THE COURT:** Yes.

17               **THE WITNESS:** No, I don't remember telling him to  
18 round up. If anything, I would have said give me an  
19 estimate, but I would not have said round up.

20 BY MR. GOLD

21       **Q.** And what did you tell Mr. Carta specifically about the  
22 polygraph?

23       **A.** I don't remember exact details but it would be something  
24 that I testified to, that a goal of treatment is going to be  
25 that I want the program participants to be able to pass a

1 polygraph about their disclosures.

2 Q. So it behooved them to be as forthcoming as possible?

3 A. Yes.

4 Q. Now, you had limited experience dealing with men in this  
5 situation prior to this; right? Almost none dealing with  
6 men in Mr. Carta's situation; right? This was your first  
7 experience doing this kind of work?

8 MS. STACEY: Objection to the form. It's compound.

9 THE COURT: Just ask him one question at a time.

10 BY MR. GOLD

11 Q. When --

12 THE COURT: Do you want to ask him are these the  
13 first adults that you dealt with?

14 BY MR. GOLD

15 Q. These are the first adults that you dealt with; correct?

16 A. No.

17 Q. With sex offending or sexual behavior problems?

18 A. No, it wasn't.

19 Q. Apart from the eight in which you sat in with  
20 Dr. Murphy?

21 A. Well, I also had done many interview, risk assessment  
22 interviews in Arkansas and written thousands of risk  
23 assessment reports that I drew upon my experience and my  
24 knowledge of sex offenders even though it wasn't therapy.

25 Q. Okay. But we are talking right now about providing

1 therapy to these people?

2 A. Right.

3 Q. So this was the first time you had been in this  
4 situation; right?

5 A. In an inpatient treatment setting, yes.

6 Q. And so the reason I ask that was was it common in your  
7 experience for men to be as forthcoming in the initial  
8 disclosures as Mr. Carta was?

9 A. I thought he was more forthcoming than I generally  
10 experienced. Several guys that I was doing the initial  
11 intakes on were forthcoming and I don't know if that's a  
12 characteristic of, you know, them coming to prison but it  
13 was more than I expected, yes.

14 Q. And did you have the sense that he was being honest with  
15 you?

16 A. Yes.

17 Q. And did you have the sense in dealing with him that he  
18 was holding back offending that he hadn't talked about?

19 A. No.

20 Q. Because he disclosed all sorts of things?

21 A. Right.

22 Q. Including things that would be potentially very  
23 embarrassing to him?

24 A. Right.

25 Q. Now, when this relationship was happening, there was no

1 such thing as civil commitment in the federal system?

2 A. Correct.

3 Q. And so you did not tell him, for example, that he would,  
4 might face civil commitment if he made disclosures; right?

5 A. Not in the federal system. I did have discussions with  
6 some of the guys and I can't say for sure if it was with  
7 Mr. Carta. But one of the things that I was trying to  
8 motivate them for treatment was that, something to the  
9 effect that sex offending, society is getting fed up, and  
10 that each time you got caught, the consequences get more  
11 severe. And if you're in a state that has civil commitment,  
12 that a new offense could be very damaging.

13 So, and like I said, I can't say that Mr. Carta and  
14 I had that discussion. But I do remember saying, talking  
15 about that. And that's the only discussion about civil  
16 commitment that I can recall.

17 Q. And you can't recall if you did that with Mr. Carta but  
18 did you do that in the context of telling him about informed  
19 consent?

20 A. No.

21 Q. In some other context; right?

22 A. Right, just trying to motivate them for treatment and  
23 saying let's get on board, let's do this, you know.

24 Q. Now, you said there were two purposes of treatment; do  
25 you recall that? You testified earlier today to manage

1 sexual deviance?

2 A. Right, and prevent recidivism.

3 Q. And prevent recidivism?

4 A. Correct.

5 Q. Now, and Mr. Carta has told you that he had a preferred  
6 body type in people; right?

7 A. Mm-hmm.

8 Q. And that was males in the 14- to 18-year old range?

9 A. Correct.

10 Q. And in your opinion is that -- well, withdrawn.

11 At the time you saw that as deviant sexual  
12 interest; right?

13 A. Correct.

14 Q. Now, you're collecting this information to synthesize it  
15 into a psychosexual evaluation; right?

16 A. Yes.

17 Q. And you also provided one-on-one counseling with  
18 Mr. Carta; right?

19 A. Yes.

20 Q. And you also, you sort of lived on the same unit with  
21 the guys; right?

22 A. I worked there, yes.

23 Q. And so you were there on the unit with them for your  
24 working day?

25 A. Right, eight hours, yes.

1 Q. And you would walk around and see them?

2 A. Right, correct.

3 Q. And so when they had some of these community meetings,  
4 sometimes you would be there?

5 A. Yes.

6 Q. And that was all considered part of the treatment  
7 community, therapeutic community I think you said?

8 A. Correct.

9 Q. Now, you talked, when you testified earlier that when  
10 Mr. Carta talked about his prior offending --

11 A. Mm-hmm.

12 Q. -- he exhibited cognitive distortions about it; right?

13 A. Right.

14 Q. And those are, you described those as faking errors;  
15 right?

16 A. Correct.

17 Q. Because a cognitive distortion is kind of a technical  
18 term in your field; right?

19 A. Right.

20 Q. And an example of a cognitive distortion is often people  
21 think children can consent to sexual contact; right?

22 A. Correct.

23 Q. Now, again, in your experience is it common for men in  
24 Mr. Carta's position to exhibit these cognitive distortions?

25 A. Absolutely.



1 Q. And, in fact, one of the whole purposes of this  
2 treatment is to isolate what those are?

3 A. Yes.

4 Q. And then to get at them; right?

5 A. Absolutely.

6 Q. And treatment is not conceived as a linear process  
7 generally; is it?

8 A. Right.

9 Q. You're thinking of taking two steps forward and one step  
10 back; right?

11 A. Well, it was one step forward and two steps back.

12 Q. Oh, yes, you're right. Thank you. You're the expert.

13 No, but two steps forward and one step back; right?

14 A. It can be, yes.

15 Q. That's the idea. And so when Mr. Carta exhibited these  
16 thoughts, it's not unusual that he would have done so;  
17 right?

18 A. Right.

19 Q. It would have been unusual if he hadn't probably?

20 A. Absolutely.

21 Q. And when he vacillated about these thoughts or when you  
22 say he was vacillating about endorsing them, meaning  
23 agreeing with them and not?

24 A. Right.

25 Q. That was done in your presence; right?

1 A. Yes.

2 Q. In fact, he was very open and honest about that part of  
3 his process with you; right?

4 A. Yes.

5 Q. And at times he became defensive?

6 A. Mm-hmm.

7 Q. And at times he would break down and agree with what you  
8 were saying?

9 A. Yes.

10 Q. Now, Mr. Carta made several attempts to or there were a  
11 couple of times when he wanted to quit treatment?

12 A. Yes.

13 Q. And you talked about the last time being the final  
14 straw; right?

15 A. Right.

16 Q. And, in fact, you testified that you thought it was the  
17 final one?

18 A. Mm-hmm.

19 Q. Now, if he were to withdraw, you would have had to write  
20 a, you told us yesterday a discharge report?

21 A. Correct.

22 Q. And so you were sort of frank with us saying that part  
23 of your motivation very well may have been to keep him in  
24 not to have to write that thing?

25 A. Well, that's correct. I mean --

1 Q. That was kind of tongue in cheek.

2 A. Exactly. And I did tell Mr. Carta in some of the times  
3 we talked that unsuccessfully -- not successfully completing  
4 treatment would be yet another risk factor in his list. And  
5 I was open with him to really think about what he was doing.

6 Q. And, in fact, Mr. Carta told you the day afterwards, and  
7 you memorialized this, that he had thought better of it yet  
8 again but felt too embarrassed to come back in?

9 A. He did. He did.

10 Q. Now, at the time that this, the last incident was  
11 happening, you were getting ready to leave; right?

12 A. Yes, I was.

13 Q. Now, is there a concept in this field of psychology  
14 called "transference"?

15 A. Yes.

16 Q. And what is that?

17 A. It is when a client develops feelings and may project  
18 them on to the therapist.

19 Q. Now, at the time that Mr. Carta was doing or withdrawing  
20 from the program, you were also leaving; right?

21 A. Yes.

22 Q. And he verbalized to you that it didn't -- I mean, and  
23 you said you thought there was a good rapport between the  
24 two of you; right?

25 A. Right.

1 Q. And you said he verbalized kind of easily oh, that's  
2 fine when you first told him; right?

3 A. Right. That's what I had documented so.

4 Q. Now, at the time, again, Mr. Carta wasn't required to be  
5 in the program; right?

6 A. You are correct.

7 Q. And he had this, when you did this discharge report, the  
8 two audiences are the sex offender treatment providers that  
9 he may have in the future?

10 A. Right.

11 Q. And a probation officer; right?

12 A. Correct.

13 Q. And so not only do you lay out the experience that you  
14 had with Mr. Carta but you have some conclusions in there  
15 about risk and things of that nature?

16 A. Right.

17 Q. And then a long list of suggestions for supervision?

18 A. Right.

19 Q. Now, one of the diagnoses that you thought was  
20 appropriate at the time was this paraphilia NOS, hebephilia;  
21 right?

22 A. Right.

23 Q. And we discussed this yesterday that it's not in the  
24 *Diagnostic and Statistical Manual* per se; right?

25 A. Paraphilia NOS is. Hebephilia --

1 Q. But that descriptor that you were talking about is not;  
2 right?

3 A. Correct.

4 Q. And we had talked about your familiarity with the book  
5 *Evaluating Sex Offenders* by Dennis Doren; right?

6 A. Yes.

7 Q. And that was one of the sources on which you said you  
8 relied for your diagnosis of hebephilia; right?

9 A. Yes.

10 Q. Now, you looked at his behavior, right, when you were  
11 making this diagnosis?

12 A. His self-report?

13 Q. Yes.

14 A. Yes, mm-hmm.

15 Q. So all his behavior basically, there is some that comes  
16 from official records but the majority of it really comes  
17 from his self-report?

18 A. Right, it's a combination.

19 Q. Now, you talked about, testified that among the things,  
20 the very private things that he admitted to you was the fact  
21 that he put his mouth on the penis of a young child when he  
22 himself was a child; right?

23 A. Right.

24 Q. But you didn't mention that he himself had been sexually  
25 abused as a young person? I think it's in the papers but

1 you didn't testify about that?

2 A. Right. I understood the earlier question to be about  
3 his sexual offending behaviors, yes.

4 Q. Right. Perhaps the question wasn't asked.

5 A. Correct.

6 Q. Now, so in your opinion at the time did you see his  
7 sexual abuse as an area to be considered in treatment  
8 planning or things like that?

9 A. Yes, the staff there, I asked them, you know, what was  
10 their general philosophy about dealing with that. And  
11 basically they said that you want to deal with sexual  
12 offending issues first and then towards the end of treatment  
13 deal with the person's own sexual victimization.

14 Q. And have you heard of reactivity in children for  
15 example?

16 A. Yes.

17 Q. And that is a concept which describes how children who  
18 are sexually abused react basically and sexually act out?

19 A. Yes.

20 Q. And did you consider that as something that was  
21 happening with Mr. Carta when he was 11 and 13 and abused  
22 that little child?

23 A. It's possible, yes.

24 Q. Now, one of the things you noted when you were taking  
25 Mr. Carta in was the fact that he had done treatment in the

1 community and had stopped?

2 A. Right.

3 Q. But Mr. Carta told you that the reason that he had  
4 stopped the treatment was he was starting this prison  
5 sentence; right?

6 A. That does sound familiar, yes.

7 Q. So in that sense it seems, is it still clinically  
8 significant that he stopped treatment?

9 A. No.

10 Q. And just to be clear about that period, he was, prior to  
11 his starting this period of incarceration he was on pretrial  
12 supervision for the child pornography crime?

13 A. Okay.

14 Q. And he was on probation for another offense; right?

15 A. That sounds familiar.

16 Q. And so he was, did this treatment while in the community  
17 for about eight months; right?

18 A. Correct.

19 Q. And he also told you that during that period when all  
20 this came to light for him he stopped drinking; do you  
21 remember that?

22 A. I do not remember that.

23 (Whereupon, counsel conferred.)

24 Q. It is certainly possible that he said that to you;  
25 right?

1       **A.** Absolutely.

2       **Q.** If we track down the document, we'll --

3       **A.** Yes, that would be common for me to find out how much  
4       they're using and when they quit. And I just don't remember  
5       the specifics of that issue.

6       **Q.** So you recall, I mean, asking about substance abuse  
7       history as something that you do --

8       **A.** Yes.

9       **Q.** -- in all these cases?

10      **A.** Routinely, right.

11      **Q.** Because it's part of the clinical picture?

12      **A.** Absolutely.

13      **Q.** Right. And so you recall taking the substance abuse  
14      history from Mr. Carta?

15      **A.** Yes.

16      **Q.** And so I'm just going to read from Bates numbered 941  
17      from your report and ask you if this refreshes your  
18      recollection as to what he told you.

19      **A.** Okay.

20      **Q.** "But he estimates that he drank three to four six-packs  
21      a week at the height of his use. He claims that he quit  
22      drinking while he was on probation because he did not want  
23      to violate the terms of his probation. He acknowledges that  
24      he has seen his tolerance increase and that he has committed  
25      criminal acts while under the influence of alcohol."



1       **A.**   Okay, yes.

2       **Q.**   Now, again, this is Mr. Carta being apparently very  
3       forthcoming about his past activities --

4       **A.**   Right.

5       **Q.**   -- in a wide variety of domains; right?

6       **A.**   Correct.

7       **Q.**   And so there he talks about having quit.  He also talks  
8       about having abused alcohol?

9       **A.**   Mm-hmm, yes.

10      **Q.**   Now, the two goals are manage sexual deviance and  
11      prevent sexual reoffending; right?

12      **A.**   Yes.

13      **Q.**   And one of the things that was of clinical concern to  
14      you that you mentioned was some of the relationships that  
15      Mr. Carta had with younger people partook of a power  
16      imbalance; do you recall that?

17      **A.**   You are talking about the program participants and the  
18      restrictions we were placing on him with the other community  
19      members?

20      **Q.**   Well, I believe the context was you were talking about a  
21      pattern of behavior for Mr. Carta both in the community --

22      **A.**   Yes.

23      **Q.**   -- and when he had these relationships with younger  
24      people --

25      **A.**   Right.

1 Q. -- they partook of a power imbalance?

2 A. Right.

3 Q. Right?

4 A. Right.

5 Q. And that the same dynamic was on display when he was  
6 interacting with these young men --

7 A. Yes.

8 Q. -- on the program?

9 A. Yes.

10 Q. Now, you said these men were about 19 to 22?

11 A. That is what I recall, yes.

12 Q. And how did you know that? Is that how they looked?

13 A. I knew them from the treatment program, from  
14 interacting. I did groups with them. And you just know the  
15 background of the people that are in the program.

16 Q. And so, but did you know it by estimating their age from  
17 interacting with them and knowing them or do you remember  
18 specifically checking to see how old they were?

19 A. I did read their, when other people would do their  
20 psychosexual evaluations, I would have read those. But, you  
21 know, I can't say that I can absolutely know with  
22 assuredness their exact ages today, no, I don't know.

23 Q. But you had the thought that they were between 19 and 22  
24 years old?

25 A. That's what I'm recalling, yes.

1 Q. And so there is nothing deviant for a man like Mr. Carta  
2 to have relationships with 19-to 20-year old men; right?

3 A. Out in the community, no, right.

4 Q. Well, is there -- now, deviance, deviant means not  
5 mainstream; right? Or does deviant have a clinical meaning?

6 A. And I may have thrown you off course. I didn't mean to  
7 imply it would be deviant if he did. It would just be  
8 against the rules of a treatment program or a prison rule  
9 violation to have sex between any of the men, inmates,  
10 that's --

11 Q. Well, we are not talking --

12 THE COURT: You weren't talking about inmates. You  
13 were talking just generally?

14 MR. GOLD: Well, no, first I asked generally.

15 BY MR. GOLD

16 Q. And I believe you conceded that; right? That it's not  
17 deviant?

18 A. I thought you said something like would it be deviant if  
19 he would have sexual relations or a relationship with 19- to  
20 22-year olds.

21 Q. And your testimony is your sense of things were it would  
22 not be?

23 A. That's not deviant, no.

24 Q. But it may not even be deviant within the Butner SOTP,  
25 it may happen a lot?

1       **A.** Right, I'm not saying that's deviant, correct.

2       **Q.** Now, but, nevertheless, his having these relationships  
3 was seen by you as negative?

4       **A.** It was problematic, yes.

5       **Q.** And, in fact, there were times when Mr. Carta agreed  
6 with your assessment; right?

7       **A.** He did.

8       **Q.** And he said that it would be better if he didn't  
9 interact with these men?

10      **A.** Correct.

11      **Q.** Now, the way you described these men -- how many men are  
12 we talking about? Three?

13      **A.** I saw three listed in the documents, so, yes.

14      **Q.** Do you have a recollection of men in particular?

15      **A.** I could remember one in particular. When I saw the  
16 document, I remembered a second. The third one I don't  
17 remember. But there was three he wrote about in treatment  
18 notes.

19      **Q.** And there were two that you remember?

20      **A.** Right.

21      **Q.** And, now, you described these men as sort of a negative,  
22 independent of this stuff happening with Mr. Carta, as sort  
23 of negative energy?

24      **A.** Right.

25      **Q.** Is that fair?

1       **A.**    Yes.

2       **Q.**    They had a lot of criminal attitudes I suppose?

3       **A.**    Mm-hmm.

4       **Q.**    Now, they were ultimately ejected from the program,  
5       these two men, is that right, or just one of them?

6       **A.**    One of them I know, I got to think.  He left the  
7       program.  I think he was thrown out.  I don't know if he  
8       quit on his own but, yeah, I know one of them didn't make  
9       it.  I'm not sure about the other one.

10      **Q.**    Now, and so do you know -- so you don't know whether he  
11      was ejected or whether he left voluntarily as you sit here?

12      **A.**    Correct.

13      **Q.**    So the way it worked is Mr. Carta came to you and you  
14      addressed -- you had these concerns and brought them up with  
15      him?

16      **A.**    We had repeated sessions about that issue, yes.

17      **Q.**    Now, if Mr. Carta was to be out in the community and  
18      interact with 19- or 20-year old men, do you see a problem  
19      with that?  Sexually I mean.

20      **A.**    Right.  And if you are asking legally, no.  If there is,  
21      as a therapist, if he's having problems maintaining  
22      relationships because of the underlying aspects of the  
23      relationship, that can be a treatment issue.

24      **Q.**    And so as a treatment provider you would see these --  
25      and I'm just going to use layperson's terms -- but a

1 relationship between Mr. Carta and a man in his early 20s as  
2 not necessarily healthy; right?

3 **MS. STACEY:** Objection.

4 **THE COURT:** What is the objection?

5 **MS. STACEY:** I think he is asking him to speculate  
6 about something in the future which -- and I was confined to  
7 his testimony at the time. So it's, he evaluated Mr. Carta  
8 at the time of his relationship with the 20-year old in the  
9 BOP prison at the time.

10 **THE COURT:** I think that is a good objection. Why  
11 don't you lay a foundation and see if he made these  
12 evaluations after he was treating him.

13 BY MR. GOLD

14 **Q.** Well, Mr. Carta actually told you that he intended to go  
15 out into the community and have relationships with men in  
16 this age range; right?

17 **A.** Correct.

18 **Q.** And this was one of the reasons why -- he also told you  
19 that he was good friends with these young men he felt?

20 **A.** Mm-hmm.

21 **Q.** Right?

22 **A.** Mm-hmm.

23 **Q.** And ultimately one of them he may have been sexually  
24 attracted to, he admitted to you that he was?

25 **A.** Correct.

1 Q. Now, and, again, there was no allegation that he  
2 sexually interacted with these men; right?

3 A. Correct.

4 Q. Now, did you at the time discuss with him whether that  
5 would be healthy? For Mr. Carta to have relationships with  
6 men in their twenties?

7 A. I don't recall specifically having that conversation. I  
8 think I had him do a paper or some type of list of, you  
9 know, what a healthy relationship for him would look like  
10 and what he was wanting, what he was working towards from  
11 treatment.

12 Q. And so what in your opinion would a healthy relationship  
13 have looked like for Mr. Carta?

14 A. I was letting him tell me what that would be. And I  
15 don't -- that paper wasn't part of the record so I have no  
16 memory of that.

17 Q. But you just testified that a relationship between  
18 Mr. Carta and someone in their early twenties would be  
19 problematic?

20 A. It could be. I'm not saying it would be.

21 Q. And you said one of the goals of treatment would be to  
22 address those underlying problems?

23 A. Yes.

24 Q. And what are the underlying problems in that  
25 relationship?

1       **A.** Well --

2       **Q.** For Mr. Carta.

3       **A.** Right. What he was describing was getting into  
4 relationships with much younger, anywhere from 13, 17, 18.  
5 These guys were in much different stages of life. They had  
6 these backgrounds where they were running away and using  
7 drugs. And he was wanting to settle down and have a stable  
8 type, you know, a long-term relationship. And it was just  
9 different stages of life. These kids weren't ready for  
10 that.

11               And so it was, he repeatedly had this pattern that  
12 he talked about where, you know, he just wanted to stay home  
13 and have quiet nights. And that's not where these kids were  
14 in life. And so that created ongoing problems.

15       **Q.** Now, I'd like to direct your attention to one of your  
16 notes that you wrote for, I guess they're called PDS notes;  
17 is that what they're called?

18       **A.** Yes.

19       **Q.** And it's page 407 in the Bates numbered series.

20               Now, I am just going to read from it and ask you if  
21 it refreshes your recollection of a particular interaction.  
22 This one is dated January 11, 2006.

23               **MS. STACEY:** Your Honor, I object to reading  
24 something that's not in evidence.

25               **MR. GOLD:** I'm sorry, Your Honor, I thought it was.



1 But I am just asking to refresh his recollection. I think  
2 this is a document which is coming into evidence.

3 **THE COURT:** I don't recall any failure of  
4 recollection.

5 **MR. GOLD:** Well --

6 **THE COURT:** What question did you ask him?

7 **MR. GOLD:** This was a -- I'm asking Dr. Wood about  
8 an interaction when Mr. Carta said he had an interest in  
9 dating men in their twenties on the outside.

10 **THE COURT:** I remember that.

11 BY MR. GOLD

12 **Q.** And we talked about that. And you had discussed,  
13 Dr. Wood, that that seemed an unwise proposition?

14 **THE COURT:** Are you asking him whether that is what  
15 he said to --

16 BY MR. GOLD

17 **Q.** Do you recall saying that?

18 **A.** No.

19 **Q.** Well, you did --

20 **THE COURT:** You said no?

21 **THE WITNESS:** I don't recall saying that.

22 BY MR. GOLD

23 **Q.** But you did testify about what the components of a  
24 healthy relationship would be; right?

25 **A.** I am saying that we had a session where I asked him to

1 do a paper about what a healthy relationship would look like  
2 for him.

3 **MR. GOLD:** Your Honor, I'd just be interested -- I  
4 know this might be a little unorthodox -- but for  
5 convenience, just this is coming into evidence in a little  
6 while as part of a nicely ordered exhibit but if I could  
7 enter this document now with the idea that it might come in  
8 again?

9 **THE COURT:** I have no idea what it is. I mean --

10 **MR. GOLD:** It's one of these PDS notes from, Bates  
11 No. 407, dated January 11, 2006. It's the note that  
12 documents I believe the interaction that we're talking  
13 about.

14 **MS. STACEY:** Right. I generally don't have  
15 objections to PDS notes. But in this case he's refreshing  
16 his recollection but there is nothing to refresh looking at  
17 this document.

18 **THE COURT:** I think he has abandoned the refreshing  
19 recollection. I think he is now just --

20 **MR. GOLD:** Now I just want to talk to him about the  
21 note, yes, Your Honor.

22 **MS. STACEY:** Right. So if he wants to question him  
23 and show him the note, that's fine. It's not listed as one  
24 of the respondent's exhibits. I'm not sure what he's doing  
25 with this but --

1           **THE COURT:** Well, neither am I so why don't you do  
2           that. Lay a foundation and then you can get it.

3           **MR. GOLD:** May I approach the witness, Your Honor?

4           **THE COURT:** Yes.

5 BY MR. GOLD

6           **Q.** Dr. Wood, we have been talking about a PDS note dated  
7           January 11, 2006.

8           **A.** Okay.

9           **Q.** Do you recognize that as a PDS note that you authored?

10          **A.** I did.

11          **Q.** And was this among the documents that was provided to  
12          you by the government before your testimony today?

13          **A.** I think so, yeah.

14          **THE COURT:** Don't cover your mouth.

15          **THE WITNESS:** I'm sorry. Yes, I believe so.

16          **MR. GOLD:** Your Honor, we'd move this document into  
17          evidence.

18          **THE COURT:** Is that your document?

19          **THE WITNESS:** Yes.

20          **THE COURT:** Did you write that?

21          **THE WITNESS:** Yes.

22          **MR. GOLD:** He is the author. He recognizes it.

23 BY MR. GOLD

24          **Q.** Is it a true copy of -- does it appear to be a true copy  
25          of --

1       A.    Yes.

2       Q.    -- the entry that you made in the BOP computer system?

3               THE COURT:   Okay.   I will let it in.

4               THE CLERK:   Exhibit A.

5               (Defendant's Exhibit No. A received in evidence.)

6   BY MR. GOLD

7       Q.    So, "Additionally inmate stated that when he is  
8       released, he will look for a partner who is in their young  
9       to mid twenties.   Problematic aspects of his behavior were  
10      addressed as was what a healthy relationship for him would  
11      look like."

12      A.    Right.

13      Q.    And so, I mean, that's the terrain we have been  
14      covering.   Does that -- what were the problematic aspects  
15      that you were discussing with Mr. Carta at that time?

16      A.    Well, I believe it is, what I was trying to explain,  
17      that that relationship in and of itself might not be a  
18      problem.   If it's a problem, that the relationship with  
19      people in their young twenties is at a different stage of  
20      life issues.   If he is coming at it from a, not a straight  
21      on position of dating, if it's this mentoring role and  
22      people that are in a one down power differential problem,  
23      that could be an issue.

24               But I wasn't going to tell him what a healthy  
25      relationship looked like.   I was working for him to help

1       come to that conclusion. That was what we were going to  
2       work on in treatment.

3       **Q.** But in your opinion with respect to that set of issues,  
4       the problem is not deviant sexual arousal, it's these other  
5       issues?

6       **A.** Right. I was helping him to have, hopefully have good  
7       adult healthy relationships. And, you know, I wasn't  
8       looking at it from the legal component of what is and is not  
9       okay. I was helping him to have a better life hopefully.

10      **Q.** And so with respect to how these men looked, that wasn't  
11      so much part of the focus; right?

12      **A.** Well, that did catch everyone's attention that was  
13      bringing this issue to his --

14      **Q.** Well, no. I am talking again about this discussion  
15      about healthy relationships that you had with Mr. Carta.  
16      The reason why relationships with men in their twenties  
17      would be problematic generally didn't have to do with  
18      deviant sexual arousal?

19      **A.** No.

20      **Q.** Now, I am reading from a document which is in evidence  
21      from the psychosexual evaluation that you wrote.

22                   Now, were you very thorough when you did these?

23      **A.** Yes. I believe so.

24                   I said I believe so.

25      **Q.** I thought I heard something.

1       **A.**    Yes.

2       **Q.**    And, in fact, we sort of joked about that last night,  
3       that you were exceptionally thorough because you were an  
4       intern and wanted to document everything; right?

5       **A.**    I'm not sure, you know, how everyone else does this; but  
6       I felt like I did put a lot of work into it, correct.

7       **Q.**    Now, Mr. Carta you wrote acknowledges liking therapy  
8       because it was the first time in his life that he could talk  
9       about his problems?

10               **MS. STACEY:**   Page?

11               **MR. GOLD:**   On Page 00941.

12       BY MR. GOLD

13       **Q.**    And so, I mean, that is consistent with what you got  
14       from Mr. Carta, that he talked about basically everything  
15       that was going on with him; right?

16       **A.**    Right. I believed he wanted help.

17       **Q.**    And then you talked about his limited insight and these  
18       cognitive distortions; right?

19       **A.**    Yes.

20       **Q.**    And a lot of that came from the process of him doing  
21       this PHQ?

22       **A.**    The cognitive distortions would come to light when we  
23       would go over the PHQ.

24       **Q.**    You would talk about it?

25       **A.**    Yes. And his beliefs about what happened on or why it

1 happened or why it's a problem that it happened.

2 Q. Because, again, the PHQ is a document and it's the --  
3 what is it?

4 A. Personal History Questionnaire. It's an extensive, like  
5 50-, 60-page questionnaire about their history.

6 Q. And a big part of the data source that we have here is  
7 this PHQ; right?

8 A. Correct.

9 Q. It's got a listing of his victims in six different ways;  
10 right?

11 A. Right.

12 Q. And when you would talk about them, he would talk to you  
13 about them in ways that made you think he had cognitive  
14 distortions about them?

15 A. About, yes, the offenses that happened.

16 Q. Now, among those cognitive distortions was, that you  
17 mentioned was this incident when he had actually a peer age  
18 sexual interaction with a 16-year old boy when he himself  
19 was 16. Do you recall the BB gun incident?

20 A. Yes.

21 Q. And that incident, he told you that he was talking about  
22 sex with a young man?

23 A. Mm-hmm.

24 Q. The young man denied, had refused to have sex with him  
25 and then he was wearing a big coat or something and

1 Mr. Carta shot him with a BB gun?

2 A. Mm-hmm.

3 Q. And then about a month later he told you that the guy  
4 came back and they had a, basically a sexual relationship  
5 which lasted for several months to a year?

6 A. Right.

7 Q. Now, it was your testimony if I have it right that  
8 Mr. Carta's denying the coercive aspect of that sequence was  
9 a cognitive distortion; right?

10 A. No. That was something I tucked in the back of my mind  
11 wondering is there a different way that it happened. It  
12 could have happened completely like he said but that was  
13 something that you would tuck back there and over the course  
14 of treatment maybe revisit and see if that was --

15 Q. Oh, and that's the way it's supposed to go; right? You  
16 are supposed to tuck things back there and not make a  
17 judgment until you have enough evidence; right?

18 A. Right. If that -- I'm ultimately not going to know if  
19 that incident went down as he said. But I'm going to see  
20 over time if he changes that version or, you know, maybe it  
21 did happen like that.

22 Q. Right. Because that's the only information that we  
23 have; right?

24 A. Right.

25 Q. And, again, with respect to the story about the 13-year



1 old and this incident in which he has, performs oral sex on  
2 a 13-year old around the time when he was a Dead Head  
3 traveling with the Grateful Dead --

4 A. Mm-hmm.

5 Q. -- he described that kid almost as a street urchin, this  
6 terrible description of the parents having something to do  
7 with it?

8 A. Right.

9 Q. Now, that's another case where those descriptions may  
10 very well have been accurate; right?

11 A. Correct.

12 Q. Things like that happen in the world?

13 A. It does, yes.

14 Q. And, again, the story that he tells about carrying on  
15 with a 13-year old who he had a, basically a two- to  
16 four-year relationship with?

17 A. Mm-hmm.

18 Q. Now, he describes this young man as already sexualized;  
19 right?

20 A. You mentioned that last night. I don't recall that  
21 but --

22 Q. Well, when he told the story, he says one day the young  
23 man appears in his van and starts masturbating?

24 A. Okay. Was that that kid -- that's true. Yes, okay.  
25 That's true.

1 Q. And that certainly could be accurate as well?

2 A. It's possible, yes.

3 Q. And about all these children or adolescents that we're  
4 learning about, we only have them through Mr. Carta's  
5 report; right?

6 A. Correct.

7 Q. We don't have images of them or what they looked like?

8 A. No.

9 Q. Now, and, again, the incident, there is another incident  
10 when he's a Dead Head and he is with a 17- to 18-year old  
11 young man in his van; right?

12 A. Yes.

13 Q. And he says that, Mr. Carta said that he got signals  
14 from this guy?

15 A. Mm-hmm.

16 Q. And then he, I guess the man is passed out and he starts  
17 molesting him; right?

18 A. Yes.

19 Q. Or fondling him?

20 A. Mm-hmm.

21 Q. And then when the man wakes up, the way Mr. Carta tells  
22 it, there is a scene and he leaves?

23 A. Correct.

24 Q. And so there is no coercion after the guy wakes up  
25 according to Mr. Carta's own account?

1       **A.**    Correct.

2       **Q.**    And, in fact, we don't know whether this man was giving  
3       signals or not?

4       **A.**    I do not, no.

5       **Q.**    Now, this treatment, the philosophy that they have in  
6       these cognitive behavioral treatment programs is that it's a  
7       lifelong process; right?

8       **A.**    Yes.

9       **Q.**    And it's a -- so, you know, a lot of these men may  
10       complete the program and not be done; right?

11       **A.**    Yes.

12       **Q.**    And they may have after care, they may have probation  
13       with mandated treatment?

14       **A.**    I believe that's recommended, that they transition in  
15       the community to an aftercare kind of follow-up program.

16       **Q.**    And they'll be continuing to go through the process of  
17       confronting their cognitive distortions and bringing them to  
18       light with other men in process group and things like that?

19       **A.**    Right, because problems may ebb and flow and they may  
20       resurface in the community.

21       **Q.**    And that's how life is?

22       **A.**    Yes.

23       **Q.**    And in these mandated treatment programs that these men  
24       may do, if they've completed the program, they have this  
25       document called a relapse prevention plan?

1       **A.** Yes.

2       **Q.** But if they have that in their pocket, that's no  
3 insurance that they won't reoffend; right?

4       **A.** Correct.

5       **Q.** Now, the supervisors of these programs or the therapists  
6 I guess are often in touch with probation officers; right?

7       **A.** The SOTP therapists?

8       **Q.** Treatment providers are often in touch with probation  
9 officers where that's --

10      **A.** I believe they do communicate with them. I sent  
11 that discharge report and I was told that's the common  
12 practice. I'm not sure how much contact they have on  
13 average.

14      **Q.** Now, the PHQ form that we talked about, there is an  
15 update form to that; right?

16      **A.** Yes.

17      **Q.** And presumably men can do that many times as they come  
18 up with new things about themselves?

19      **A.** Right.

20      **Q.** Right?

21      **A.** Mm-hmm.

22               **MR. GOLD:** May I approach, Your Honor?

23               **THE COURT:** Yes.

24               **MS. STACEY:** What are you approaching with?

25               **MR. GOLD:** 1023 (indicating).

(Whereupon, counsel conferred.)

BY MR. GOLD

Q. Dr. Wood, I have handed you a document. Do you recognize it?

A. Right, it's a PHQ Update Form.

Q. And do you recognize the PHQ Update Form in general?

A. Yes.

Q. And this was a form that men were, did they submit it to you or how did it get done?

A. In general a new updated form would be asked for by the individual therapist if the person said, you know, they weren't honest the first time or if they learned new things they want to disclose. And I don't remember why we did one with Mr. Carta.

Q. Do you recognize or does that -- do you recognize that document that I just put in front of you?

A. Yes, yes.

Q. And that is the PHQ Update Form?

A. Mm-hmm.

Q. And you would have asked him to do it but you don't specifically recall right now?

A. I think it's common that I could have but probably me and the psychologist could have asked him to do it. But it probably would have been me.

Q. Now, is this among the documents that you received prior

1 to your testimony today?

2 **A.** I believe that's in there. Yes, I have seen that update  
3 form.

4 **Q.** You have seen it?

5 **A.** Yes.

6 **Q.** And do you recognize it as being among the treatment  
7 documents in Mr. Carta's file that was maintained at the  
8 Bureau of Prisons?

9 **A.** Yes.

10 **Q.** And you typically rely on documents like this in  
11 drafting other documents?

12 **A.** Yes.

13 **Q.** As part of your work?

14 **A.** Right.

15 **MR. GOLD:** I move to admit this.

16 **MS. STACEY:** It's already in evidence, Your Honor.

17 **MS. KELLEY:** It's in. It went in with the big  
18 packet.

19 **MR. GOLD:** Oh, and they told me that and I didn't  
20 hear them, Your Honor.

21 **THE COURT:** Okay. That is all right. Go ahead.

22 **MR. GOLD:** In that case --

23 **THE COURT:** What is the exhibit number?

24 **MS. STACEY:** It is Exhibit No. 27.

25 **THE COURT:** Is that the global?

1           **MS. STACEY:** The global, Bates page 01023.

2           **THE COURT:** So why don't we mark this page as 27A  
3 since you are using it separately. Okay.

4           **MR. GOLD:** Great.

5           **(Defendant's Exhibit No. 27A received in evidence.)**

6 BY MR. GOLD

7           **Q.** Now, so this is a standard form; right?

8           **A.** Yes.

9           **Q.** And so it has three questions here. And it asks the  
10 participants to assess and describe your own progress in the  
11 Sex Offender Treatment Program. And the first section is in  
12 what areas do you feel you have improved or developed the  
13 most.

14           And Mr. Carta said, "Understanding what it means to  
15 be a victim, really coming to an understanding of how  
16 deviant I've been throughout my entire life, seeing a real  
17 need for change in order to live a more productive and  
18 normal life."

19           And this document is dated January 13, 2006; right?

20           **A.** Okay, yes.

21           **Q.** And so this again is part of that ebb and flow that we  
22 expect in treatment; right?

23           **A.** Correct.

24           **Q.** And after this, the confrontation regarding the young  
25 man happened basically twice more; right?

1       **A.**   Yes.

2       **Q.**   Now we talked about Frank Damba; right?

3       **A.**   Yes.

4               **THE COURT:**   Frank?

5               **MR. GOLD:**   Frank Damba.

6               **THE COURT:**   Spell that.

7               **MR. GOLD:**   D-A-M-B-A.

8       BY MR. GOLD

9       **Q.**   And he is one of the men, these youthful men that  
10      Mr. Carta was interested in; right?

11      **A.**   Yes.

12      **Q.**   Now, Mr. Carta -- you talked about these community  
13      meetings in the morning; right?

14      **A.**   Right.

15      **Q.**   And part of what happens in this therapeutic community  
16      is that people are supposed to challenge each other on  
17      things that they're doing?

18      **A.**   Yes.

19      **Q.**   And make public certain things that might otherwise be  
20      hidden; right?

21      **A.**   Yes.

22      **Q.**   Now, Mr. Carta participated in that process; right?

23      **A.**   Yes.

24      **Q.**   And, in fact, he confronted Mr. Damba on certain things  
25      that he was doing; right?



1           **MS. STACEY:** Objection.

2           **THE COURT:** Damba?

3           **MR. GOLD:** Damba, D-A-M-B-A.

4           **THE COURT:** I have got it spelled wrong.

5           I am going to overrule the objection. Go ahead.

6           You may have it.

7           **A.** I'm sorry, the question -- my hesitancy here is I'm  
8           starting to get uncomfortable about talking about another  
9           inmate's treatment.

10           **THE COURT:** He is not asking you for that. He is  
11           asking what you heard Mr. Carta say to Mr. Damba, as I  
12           understand it.

13           **MS. STACEY:** Well, and that was the basis of my  
14           objection.

15           **THE COURT:** Do I have that right?

16           **MR. GOLD:** That's right, Your Honor.

17           **THE COURT:** You are asking him what he said, what  
18           he heard Mr. Carta say to Mr. Damba?

19           **MR. GOLD:** To Mr. Damba, correct.

20           **THE WITNESS:** Okay. Correct.

21           **THE COURT:** Just sort of putdowns, that is what you  
22           are talking about; right?

23           **MR. GOLD:** Well, no. Now, these community  
24           meetings -- well, putdowns is one way to --

25           **THE COURT:** You are asking for -- criticizing

1 something that each one had done.

2 **MR. GOLD:** Right. I bet Dr. Wood would object to  
3 the term "putdowns" but these --

4 **THE COURT:** Well, let's wait.

5 **MR. GOLD:** -- constructive --

6 **THE COURT:** He doesn't have any objection right.

7 (Laughter.)

8 BY MR. GOLD

9 **Q.** But, Dr. Wood, just to be clear, these community  
10 meetings, where did they happen on the Maryland Unit?

11 **A.** There was a large community room in the back that, you  
12 know, could hold I think all hundred guys at the same time.  
13 I think they split them up in an a.m. and a p.m. so maybe  
14 half the treatment program would go into that community room  
15 and have meetings. They would go over announcements for the  
16 day and what issues are going on in the unit. It had a  
17 structure to it.

18 **Q.** And it wasn't just the, it wasn't just the men, right,  
19 it was also treatment and therapy providers?

20 **A.** Right, there was always a treatment staff member  
21 assigned to that and other people, other staff could come in  
22 as they wanted or needed.

23 **Q.** And you told us that sometimes if you knew something was  
24 going to happen with one of your guys, you would make an  
25 effort to attend; right?

1       **A.**   Correct.

2       **Q.**   And there was oftentimes something happening with  
3       Mr. Carta; right?

4       **A.**   It seemed to be toward the end, yes.

5       **Q.**   And so you would go and witness what was happening;  
6       right?

7       **A.**   Right.   For example, when he was going to announce the  
8       problem he was having or the restriction he was placing on  
9       himself, I would try to be there to see how that happened or  
10      occurred.

11      **Q.**   And so Mr. Carta in one of these community meetings  
12      confronted Mr. Damba.   Do you recall that?

13               **MS. STACEY:**   Objection.   It's a relevance objection  
14      in addition to the privacy objection, Your Honor.

15               **THE COURT:**   Overruled.

16               You may have the question.   Go ahead.

17      **A.**   Okay.   So Mr. Carta confronted Mr. Damba, yes.

18      **Q.**   And that's one of the reasons Mr. Damba left the SOTP?

19               **MS. STACEY:**   Objection.

20      BY MR. GOLD

21      **Q.**   Isn't that right?

22               **MS. STACEY:**   Objection.

23               **THE COURT:**   I am going to sustain the objection to  
24      that question.

25      BY MR. GOLD

1 Q. Well, after -- what was the subject matter of that  
2 confrontation?

3 MS. STACEY: Objection.

4 THE COURT: You mean what did he hear Mr. Carta  
5 say?

6 MR. GOLD: Yes.

7 THE COURT: If that is your question, then you may  
8 have it.

9 MS. STACEY: Your Honor, he is confronting another  
10 sex offender about something the sex offender might have  
11 done. I think it's improper for him as a psychologist and a  
12 treatment provider to testify. Mr. Damba is not here.

13 THE COURT: I understand he is not here. He may  
14 have the question. Go ahead.

15 BY MR. GOLD

16 Q. What did you hear Mr. Carta say to Mr. Damba in this  
17 community meeting?

18 A. I don't remember.

19 Q. But after this, shortly after this Mr. Damba left the  
20 program; right?

21 A. My general memory is that there was an ongoing back and  
22 forth between them.

23 (Whereupon, counsel conferred.)

24 Q. Now, around this time, if you recall, did Mr. Carta talk  
25 to you about being distressed about ratting other inmates

1 out?

2 A. That does sound familiar, yes.

3 Q. And he stated that that was an additional reason why he  
4 wanted to leave the program; do you recall that?

5 A. I don't remember him specifying it. I thought he said  
6 that he didn't want to talk about his reasons for ultimately  
7 leaving the program. That might have been discussed earlier  
8 is maybe what you're asking.

9 That's a common complaint. I have heard many  
10 people say that so I have trouble saying that that was  
11 Mr. Carta.

12 (Whereupon, counsel conferred.)

13 Q. So it was a six-month period for you there?

14 A. Yes.

15 Q. At Butner?

16 A. Yes.

17 Q. And you testified earlier about how you would tell the  
18 guys what a great opportunity it was to do the program?

19 A. Yes.

20 Q. And that's because they weren't going to have an  
21 opportunity like that probably again, to have that kind of  
22 treatment for free?

23 A. Right, right.

24 Q. Now, and it was an around-the-clock sort of affair;  
25 right?

1       **A.**   Yes.

2       **Q.**   And what we've been talking about, these men lived  
3       together 24/7?

4       **A.**   Correct.

5       **Q.**   Were those community meetings that we talked about every  
6       day?

7       **A.**   I think they were every weekday. I don't think they  
8       happened on the weekend.

9       **Q.**   So every morning they had these public meetings?

10      **A.**   Right. The group was split in half. There was a.m. and  
11      p.m. group meetings.

12      **Q.**   And they would do psycho educational classes?

13      **A.**   Yes.

14      **Q.**   And they would do process group?

15      **A.**   Yes.

16      **Q.**   They had the one-on-one with you?

17      **A.**   Right.

18      **Q.**   Are there other components that I am leaving out?

19      **A.**   Right, and then the daily community meetings. All those  
20      are I think the main gist of it.

21      **Q.**   And they are supposed to think of themselves as in a  
22      therapeutic community?

23      **A.**   Yes.

24      **Q.**   And they're not in any of these things; right?

25      **A.**   Right, right.

1 Q. So do you have any sense of what the dropout rate is?

2 A. I told you last night, I asked Dr. Hernandez that. I  
3 was curious. And I thought I remembered him to say 30 to 40  
4 percent.

5 Q. Of people dropping out?

6 A. Of people that don't complete the program for various  
7 reasons, whether they get kicked out or dropped out.

8 Q. And it's also just a very intense experience for these  
9 men, would you agree with that statement?

10 A. Yes.

11 Q. And they may form very intense bonds with the people who  
12 are in the program with them?

13 A. I saw that, yes.

14 Q. Now, sometimes there is sexual acting out in these  
15 programs. Did you witness that?

16 A. I'm sure it's possible but I have no knowledge of any  
17 sexual acting out.

18 MR. GOLD: I have nothing further.

19 THE COURT: Okay. Any redirect?

20 MS. STACEY: Nothing further, Your Honor.

21 THE COURT: Okay. You are excused, sir. Thank  
22 you.

23 Next witness.

24 (The witness was excused.)

25 MS. BOAL: The government calls Dr. Amy Phenix.

AMY PHENIX, Sworn

DIRECT EXAMINATION

BY MS. BOAL

Q. Good afternoon, Dr. Phenix.

A. Good afternoon.

Q. Could you please state and spell your name for the record.

A. Amy Phenix, A-M-Y P-H-E-N-I-X.

Q. What is your occupation?

A. I'm a clinical psychologist in private practice.

Q. Dr. Phenix, have you rendered an opinion in this case as to whether Mr. Carta is a sexually dangerous person?

A. I have.

Q. Before we get to your opinion, I'm going to ask you some questions about your background. If you could turn to tab two in the binder which has been marked as -- I'm sorry -- marked as Exhibit 2, do you recognize that document?

A. I do.

Q. And what is it?

A. That's my CV.

MS. BOAL: Your Honor, I understand there is no objection to that and we would move into evidence Government Exhibit 2.

THE COURT: No objection?

MR. GOLD: No objection.



1                   **THE COURT:** It comes in.

2                   **(Government's Exhibit No. 2 received in evidence.)**

3 BY MS. BOAL

4       **Q.** Are you a licensed psychologist?

5       **A.** Yes, I am.

6       **Q.** How many years have you been licensed and in what  
7 states?

8       **A.** I have been licensed in California since 1992. And I am  
9 also licensed in the state of Washington for about the last  
10 three years and the state of Florida for also about four  
11 years.

12       **Q.** Please briefly describe your educational background by  
13 institution, field of study, degree received --

14                   **THE COURT:** We have got the CV; right?

15                   **MS. BOAL:** We do, Your Honor.

16                   **THE COURT:** So I have it. I don't have to hear it  
17 too.

18                   **MS. BOAL:** Okay.

19                   **THE COURT:** Go ahead.

20 BY MS. BOAL

21       **Q.** For how long have you been involved in the treatment or  
22 evaluation of sex offenders?

23       **A.** Since 1989.

24       **Q.** And do you stay current on the literature in the field  
25 of sex offenders?

1       A.   Yes.

2       Q.   And have you published on the topic of sex offenders?

3       A.   I have.

4       Q.   And what have you published?

5       A.   I have published a book chapter and a few articles.  I  
6       have a publication in the Journal of The American Academy of  
7       Psychiatry and Law.  That publication is with a number of  
8       other authors in 2001 called, "*Actuarial Risk Assessment*  
9       *Models: A review of critical issues related to violence and*  
10      *sex-offender recidivism assessments*."

11               I also have a reply in the same journal to an  
12      article called -- the reply is called, "*Antisocial*  
13      *Personality Disorder Is Not Enough: A reply to Sreenivasan,*  
14      *Weinberger, and Garrick*."

15               I wrote a book chapter in Innovations in Clinical  
16      Practice: A Source Book."  And that chapter was on the risk  
17      assessment of sex offenders.

18               And furthermore I'm one of the authors on the  
19      Coding Rules for the Static-99 and now the Static-2002.

20      Q.   And are any of those publications peer reviewed?

21      A.   Yes, two of them were.

22      Q.   And is Exhibit 3 the list of your publications in the  
23      binder?

24      A.   Yes.

25               MS. BOAL:  And we would move into admission

1 Exhibit 3, Your Honor.

2 MR. GOLD: No objection.

3 THE COURT: Okay. It comes in.

4 (Government's Exhibit No. 3 received in evidence.)

5 BY MS. BOAL

6 Q. Have you given any presentations at conferences on the  
7 topic of sex offenders?

8 A. Yes, I have.

9 Q. And how many and on what topic generally?

10 A. Oh, about 25 or so, 30 presentations.

11 Q. And have you also provided training and, if so, on what  
12 topic generally?

13 A. Yes, I provide training on coding the actuarial  
14 instrument, the Static-99, as well as training on sex  
15 offender risk assessment.

16 Q. And have you ever testified in court about your  
17 professional opinions in this area?

18 A. Yes.

19 Q. And has that testimony included the diagnosis of mental  
20 illnesses or disorders suffered by sex offenders?

21 A. Yes.

22 Q. And has the testimony included the risk of recidivism  
23 that would be posed by sex offenders?

24 A. Yes.

25 Q. And have you testified for both the prosecution and

1 defense in sexually dangerous person cases?

2 A. Yes, I have.

3 Q. And in the last couple of years approximately what  
4 percentage have you testified for the prosecution and what  
5 percentage have you testified for the defense?

6 A. About 70 percent for the prosecution, about 30 percent  
7 for the defense.

8 Q. Have you ever failed to qualify as an expert?

9 A. No.

10 Q. Did you render an opinion as to whether or not Mr. Carta  
11 is a sexually dangerous person?

12 A. Yes, I did.

13 Q. And did you write a report that contains those  
14 conclusions?

15 A. I did.

16 Q. And turning to tab one in the exhibit binder, is that  
17 your report?

18 A. Yes, it is.

19 MS. BOAL: Your Honor, I would move Government's  
20 Exhibit 1 into evidence. I understand there is no  
21 objection.

22 THE COURT: It comes in.

23 (Government's Exhibit No. 1 received in evidence.)

24 BY MS. BOAL

25 Q. Before reaching an opinion, what, if any, materials did

1 you review?

2 **A.** I reviewed a number of materials. I reviewed all the  
3 criminal legal records in this matter, charging documents,  
4 conviction documents, police officers' report, presentence  
5 report in this case.

6 Furthermore I reviewed the records from the  
7 Department of Corrections which also contained his treatment  
8 records in the Sex Offender Treatment Program and other  
9 psychiatric records as well in this case.

10 **Q.** Are those records the type that are reasonably relied on  
11 by experts in your field in forming opinions or inferences  
12 regarding whether a person is sexually dangerous?

13 **A.** They are.

14 **Q.** What, if any, actuarial instruments did you use in  
15 connection with your review of this case?

16 **A.** I used two actuarial instruments. I scored the  
17 Static-99 as well as the Minnesota Sex Offender Screening  
18 Tool Revised or what I'll call the MnSOST-R.

19 **Q.** Did you interview Mr. Carta?

20 **A.** I did not.

21 **Q.** And why did you not meet or interview Mr. Carta?

22 **A.** He declined to be interviewed.

23 **Q.** And, in fact, was there a court order that you could not  
24 interview him?

25 **A.** Yes.

1 Q. In the past have you evaluated whether someone was a  
2 sexually dangerous person without an interview?

3 A. Yes, I have.

4 Q. And is that an accepted practice in your field?

5 A. It is as long as you have adequate records in order to  
6 offer an opinion.

7 Q. And did you have adequate records in this case?

8 A. Yes, I did.

9 Q. Turning to the first element under the statute, do you  
10 have an opinion based on a reasonable degree of professional  
11 certainty as to whether Mr. Carta engaged in or attempted to  
12 engage in sexually violent conduct and/or child molestation?

13 A. Yes.

14 Q. And what is that opinion?

15 A. I believe he has.

16 Q. Did he engage in sexually violent conduct?

17 A. Yes.

18 Q. Please describe the sexually violent conduct that  
19 Mr. Carta has engaged in.

20 A. The first incident of sexually violent conduct was  
21 actually discussed previously and that would be when he was  
22 11 to 13 years of age and he orally copulated a 4-to 5-year  
23 old child.

24 Q. And what would be the next incident?

25 A. The next incident would be when he engaged in mutual

1 oral copulation with his 7-year old cousin, again, when he  
2 was between the ages of 11 and 13. And this behavior  
3 occurred on ten occasions over about a year period.

4 **Q.** What is the next incident of sexually violent conduct  
5 Mr. Carta engaged in?

6 **A.** The next incident would be the incident when he was  
7 about 15 years of age when he engaged in oral copulation  
8 with another similar aged peer who he shot with a BB gun in  
9 the process of first trying to talk him into engaging in  
10 sexual activity with him. And then when he did not, he shot  
11 him with a BB gun.

12 **Q.** And what would be the next incident of sexually violent  
13 conduct?

14 **A.** The next incident would involve when he was 28 years of  
15 age, he orally copulated an intoxicated 13-year old boy who  
16 he had coerced into engaging in sexual activity by offering  
17 him tickets to a concert.

18 **Q.** What would be the next incident of sexually violent  
19 conduct?

20 **A.** That would be when he engaged in non-consenting sexual  
21 activity with a 17- or 18-year old male that was discussed  
22 previously who had passed out, who was intoxicated. When he  
23 woke up, it was obvious that it was non-consenting sexual  
24 activity and that the male yelled and caused a disturbance.

25 **Q.** What is the next incident of sexually violent conduct?

1     **A.** The next incident would be when Mr. Carta was 30 or 31  
2     years of age. And he engaged in sexual activity repeatedly  
3     over a four-year period with a 13-year old male who he  
4     engaged in sexual contact with on 30 to 40 separate times.

5     **Q.** What is the next incident of sexually violent conduct?

6     **A.** The next incident of sexually violent conduct would be  
7     when he engaged in oral copulation again with a 13-year old  
8     male that he met over the Internet.

9     **Q.** And what is the last incident of sexually violent  
10    conduct?

11    **A.** The last incident would involve the sexual activity that  
12    he engaged in with a 15-year old brother of his 17-year old  
13    boyfriend Frederick.

14    **Q.** And why do you characterize these acts as sexually  
15    violent?

16    **A.** These are acts that involve non-consenting victims or  
17    they involve boys in contact sexual offenses. And we know  
18    that this kind of sexual activity, repeated sexual activity  
19    with these young boys, 13-year old boys is sexually violent  
20    because of the hurt and harm that it perpetrates upon those  
21    boys and the victims involved.

22    **Q.** Did Mr. Carta engage in acts of child molestation?

23    **A.** Yes, he did.

24    **Q.** And please describe the acts of child molestation in  
25    which Mr. Carta has engaged.



1     **A.** Some of the acts that were sexually violent I also  
2 characterized as acts of child molestation.

3             And that first incident of child molestation would  
4 be when he was 11 to 13 and orally copulated a 3-to 4-year  
5 old child.

6     **Q.** Is it fair to say that all the acts of child molestation  
7 are the same as the sexually violent conduct except for the  
8 one involving the 17- or 18-year old who passed out that was  
9 molested?

10    **A.** That would be correct.

11    **Q.** And why do you characterize those acts as child  
12 molestation?

13    **A.** Because those were children. And in terms of examining  
14 who would be considered a child, someone in their later  
15 teens would not be considered a child but I considered  
16 these, certainly these 13-year olds and 15-year olds as  
17 children.

18    **Q.** Do you have an opinion based on a reasonable degree of  
19 professional certainty as to whether Mr. Carta suffers from  
20 a serious mental illness, abnormality or disorder?

21    **A.** Yes, I do.

22    **Q.** And what is your opinion?

23    **A.** I believe he suffers from five mental abnormalities,  
24 mental illnesses or disorders.

25    **Q.** And what is the first one?

1     **A.** The first of those is paraphilia not otherwise  
2     specified.

3     **Q.** What does the term "paraphilia" refer to?

4     **A.** Paraphilia refers to an individual who experiences  
5     intense recurrent sexually arousing fantasies, urges or  
6     behavior that involve one of three acts. And in terms of a  
7     paraphilia, the first would be this type of fantasies or  
8     behaviors with non-human objects. That would be something  
9     like a fetish with women's panties or perhaps shoes.

10           The second would be the suffering or humiliation of  
11     one's self or one's partner, typically known and diagnosed  
12     in the DSM as sexual sadism or sexual masochism.

13           And the final category of paraphilias would be  
14     sexual fantasies, urges and behaviors with children,  
15     prepubescent children and other non-consenting persons.

16     **Q.** What does the NOS refer to in the paraphilia NOS  
17     diagnosis?

18     **A.** That means not otherwise specified.

19     **Q.** Are you familiar with the *Diagnostic and Statistical*  
20     *Manual of Mental Disorders*?

21     **A.** Yes.

22     **Q.** And what is the -- is it also known as the DSM?

23     **A.** Yes.

24     **Q.** And what is the DSM?

25     **A.** The DSM is a classification manual that contains all of

1 the known research on mental disorders, symptoms of various  
2 mental disorders. It's a classification manual that allows  
3 mental health workers to have an agreement on various mental  
4 disorders.

5 Q. And so is the DSM generally relied on in your field?

6 A. Oh, yes.

7 Q. And are you familiar with the diagnostic criteria for  
8 paraphilia NOS as listed in the DSM?

9 A. Yes.

10 Q. And turning to tab 11 of the binder, are those the  
11 DSM-IV diagnostic criteria for paraphilia NOS?

12 A. Yes.

13 MS. BOAL: Your Honor, I would move those  
14 diagnostic criteria into evidence. And I understand there  
15 is no objection.

16 MR. GOLD: That's right, no objection.

17 THE COURT: Okay. It may come in.

18 (Government's Exhibit No. 11 received in evidence.)

19 BY MS. BOAL

20 Q. Could you explain in your own words generally what the  
21 diagnostic criteria are for paraphilia NOS?

22 A. Paraphilia not otherwise specified is a category that is  
23 used when you have a paraphilia that does not fit into any  
24 other specific subcategory in the paraphilias.

25 For example, there is a specific category for

1 pedophilia, sexual arousal to prepubescent children, a  
2 specific category for sexual sadism.

3 But when a sexual abnormality does not fit into one  
4 of the specific categories, just like all the other mental  
5 disorder categories in the DSM, there is a specific category  
6 one would use to diagnose that paraphilia and that would be  
7 paraphilia not otherwise specified with an explanation or a  
8 descriptor, if you will, of what that particular sexual  
9 disorder is.

10 Q. And does Mr. Carta meet the diagnostic criteria of  
11 paraphilia NOS?

12 A. Yes, he does.

13 Q. And does it also have to have lasted more than six  
14 months?

15 A. Yes, there is a time requirement.

16 Q. And why does Mr. Carta meet the criteria for paraphilia  
17 NOS?

18 A. In my opinion he meets that criteria because of his long  
19 established pervasive sexual arousal to children becoming  
20 pubescent and also to post-pubescent teens.

21 For individuals who are aroused to younger people,  
22 they have different arousal patterns. It could be to  
23 prepubescent children or any time through the teen years.  
24 And what we see here is his self-stated very specific  
25 arousal. He reported in the SOTP program that his primary

1 arousal is to children age 12 to 17 and that his secondary  
2 arousal or sexual interest was to children 7 to 11.

3 So we have data that tells us a good deal of  
4 information about Mr. Carta's arousal patterns. And  
5 certainly that had to do with his criminal offense and the  
6 reason that he went to prison.

7 So not only do we have some admissions and  
8 behaviors but we also have some understanding of his arousal  
9 patterns by the pornography that he viewed and for which he  
10 was arrested and convicted.

11 He has reported that he is aroused to, primarily to  
12 boys age 12 to 17. In fact, if you look at the age of the  
13 pornography for which he had 50,000 images of children, the  
14 age group there was much wider. That was from age three all  
15 the way up to age 17.

16 He has denied sexual arousal to the younger  
17 children. And, in fact, I don't have any evidence of  
18 behaviors which indicate he has acted out on sexual arousal  
19 to younger children but I do have at least in this case a  
20 number of admissions that we have talked about a few times  
21 now today.

22 His admissions that he has acted out three times as  
23 an adult with a 13-year old children, so certainly we can  
24 establish that at the very least his arousal begins at 12 or  
25 13 when a child is becoming pubescent, has some of those

1 secondary sexual characteristics but not all of them, so an  
2 immature child becoming an adult.

3 And then we also have evidence in his admissions  
4 that he has sought out on the Internet and met young  
5 teenagers. He advertised for teenagers between the age of  
6 14 and 18 to engage in sex with them, to have them as sexual  
7 partners.

8 We know that he is very aroused to this age group  
9 between the ages of, at the very least 12 to 17, because of  
10 the compulsivity with which he engaged in viewing this  
11 pornography. He reported masturbating two to three times a  
12 day which is well over the average for a man his age.

13 Viewing this pornography 12 to 14 hours a day at  
14 the exclusion of working, showering, taking care of his  
15 hygiene, so it was extremely highly compulsive behavior.  
16 And furthermore he has acted out on his sexual arousal to  
17 children becoming pubescent and teenagers ever since he was  
18 very young.

19 So while we don't diagnose individuals who are  
20 under the age of 16 with a paraphilia or a sexual  
21 abnormality, we certainly often see the development of these  
22 disorders early on. And that's exactly what we are able to  
23 see in Mr. Carta's case, that age 11 to 13 he was developing  
24 sexual arousal not to his peers as we should have seen with  
25 normal sexual development but to younger children.

1           And then we see him at age 15 sexually active with  
2           peers. And then what happened sexually with his development  
3           as he gets older, we see that as he gets older he maintains  
4           this sexual arousal to this younger age group, this 13-,  
5           14-, 15-, 16-year age group, when he is in his twenties,  
6           when he is in his thirties and when he is in his forties.

7           And this is an abnormal sexual development that I  
8           have described as paraphilia not otherwise specified.

9           **Q.** If a sexual behavior is legal, can the person still have  
10          a diagnosis of paraphilia NOS?

11          **A.** Oh, sure.

12          **Q.** And could you give some examples.

13          **A.** For example, there are diagnoses that you would diagnose  
14          as paraphilia not otherwise specified when there is sexual  
15          arousal to sexual activity that involves urine or feces.  
16          This is not illegal activity but it's abnormal. It's  
17          statistically abnormal and unusual.

18          And if it causes distress in the person, then it  
19          can become a mental disorder that you've diagnosed as  
20          paraphilia. It may be. It may not be.

21          **Q.** You mentioned the term "hebephilia" in your report. And  
22          what is that?

23          **A.** I mentioned that because over the years that has been,  
24          well, since I think about the 1950s in some of the  
25          literature this arousal pattern to children becoming

1 pubescent and a preference, excuse me, and a preference for  
2 teenagers has been described as hebephilia in various  
3 journal articles and various researchers have discussed it  
4 in that term.

5 So "hebephilia" is a very accepted term in my field  
6 to describe this particular sexual arousal pattern.

7 **Q.** And what when you say it's an accepted term, why do you  
8 say that?

9 **A.** Well, it's well recognized by those of us that work in  
10 this field diagnostically. If someone comes to me and says,  
11 you know, I've provided this diagnosis, I know exactly what  
12 it means. It means that the person does not have just  
13 sexual arousal or perhaps any sexual arousal to prepubescent  
14 children but that is this preference for young teens to --  
15 throughout the teenage years actually till about age 17.

16 And some articles actually refer to hebephilia, you  
17 see, I see in, because I have an opportunity to review many  
18 evaluations for the purpose of the sexually violent predator  
19 laws or sexually dangerous person laws throughout the  
20 country, I'll see those diagnoses offered as we have seen in  
21 this case: Paraphilia not otherwise specified, hebephilia,  
22 which is simply another term for sexual arousal to children  
23 becoming pubescent and postpubescent children.

24 **Q.** And when you mentioned articles describing hebephilia,  
25 are those peer reviewed articles?



1       **A.** Yes, we do have peer reviewed articles, yes.

2       **Q.** And are there physiological tests to determine an  
3 arousal pattern?

4       **A.** Yes. That's how we know about arousal patterns. We've  
5 studied them via physiological tests. For example,  
6 phallometric assessment is a physiological test designed  
7 just to determine what a person's arousal pattern is. The  
8 person is subject to slides or video, tapes of individuals  
9 of both sexes, male and female, and all varying ages. And  
10 additionally their erectile response while looking at those  
11 slides is monitored to see where their sexual interest lies.

12               And in administering these tests, phallometric  
13 assessment, or called penile plethysmograph, we can tell if  
14 individuals are sexually aroused to children or adults or  
15 males or females in many cases.

16               There is also another type of test, the Abel  
17 Assessment for Sexual Interest, where the same similar types  
18 of slides of males and females at various ages are shown and  
19 then the individuals, the length of time that they focus or  
20 look at, their visual reaction time to that slide shows more  
21 interest in that particular age group or sex.

22               So we have ways to measure sexual arousal patterns.  
23 Often times it's less necessary when a person has discussed  
24 them at length and furthermore when we have a lot of  
25 behaviors that indicate what that arousal pattern is.

1 Q. Did you diagnose Mr. Carta with hebephilia?

2 A. I did not, no.

3 Q. So what is your diagnosis of Mr. Carta -- what  
4 paraphilia did you diagnose Mr. Carta as having?

5 A. Paraphilia not otherwise specified. The DSM notes that  
6 if you provide a diagnosis that doesn't have a specific  
7 category, that it be diagnosed in the category of paraphilia  
8 not otherwise specified.

9 Q. Can paraphilia NOS amount to a serious mental illness,  
10 abnormality or disorder?

11 A. Oh, of course.

12 Q. And do you believe that Mr. Carta's paraphilia NOS is a  
13 serious mental abnormality, illness or disorder?

14 A. Yes, absolutely.

15 Q. And why do you say that?

16 A. Well, I say that because it has cost him a significant  
17 loss of freedom in his life. He has, he has not been able  
18 to function as a normal human being because he became so  
19 obsessed with looking at pornography that was illegal, that  
20 he became incredibly risky with his behavior.

21 Hence, he was caught, incarcerated, separated from  
22 his family and unable to maintain normal relationships in  
23 the community and subject to, you know, criminal sanctions.  
24 I mean, that's been a huge sacrifice in his life as a result  
25 of this problem.

1 Q. Now, you said you diagnosed Mr. Carta with five  
2 diagnoses. And we talked about paraphilia NOS. Did you  
3 also diagnose him with various substance abuse disorders?

4 A. Yes, I did.

5 Q. And with which ones?

6 A. I diagnosed him with hallucinogen dependence, cannabis  
7 dependence and alcohol abuse.

8 Q. And are there DSM-IV criteria for all of these  
9 diagnoses?

10 A. There are.

11 Q. And did he meet the criteria for these diagnoses?

12 A. He met sufficient criteria, yes.

13 Q. And are those criteria located at tabs 12, 13, 14 in the  
14 exhibit binder?

15 A. Yes.

16 MS. BOAL: Your Honor, I believe there is no  
17 objection to the admission of those diagnostic criteria.

18 THE COURT: Okay. They come in.

19 (Government's Exhibit No. 12 received in evidence.)

20 (Government's Exhibit No. 13 received in evidence.)

21 (Government's Exhibit No. 14 received in evidence.)

22 BY MS. BOAL

23 Q. Why does he meet the criteria for hallucinogen  
24 dependence?

25 A. Mr. Carta has a lengthy history in the past. He began

1 using LSD, which is a hallucinogen, when he was about 12 to  
2 18 years of age. He used it for approximately twenty years.  
3 He was involved in the music culture and primarily during  
4 that time I believe it was his heaviest use, he described it  
5 in his twenties and thirties as actually extremely heavy.

6 He used hallucinogens approximately three times a  
7 week. He said he developed a tolerance which was one of the  
8 criteria for substance dependence. He developed a tolerance  
9 over time.

10 He said initially he would take three to four doses  
11 of LSD. And it got to the point because of his excessive  
12 use that he, and his tolerance, that he would use up to 50  
13 doses of LSD, which is quite excessive.

14 **Q.** And why does he meet the criteria for cannabis  
15 dependence?

16 **A.** For cannabis dependence, he began to use marijuana at  
17 age 17 or 18. He described being a heavy smoker and having  
18 habitual use of marijuana, really throughout the time until  
19 he was incarcerated for the instant offense.

20 He described smoking, you know, ten marijuana  
21 cigarettes a day. And he also described withdrawal symptoms  
22 which is another characteristic symptom of substance  
23 dependence. So his withdrawal, when he would withdraw from  
24 it or stop using it, he would become irritable.

25 And, furthermore, he said that he, records indicate

1 that he -- and when I say "he said," I know that this is a  
2 review of the records so the records would indicate that he  
3 smoked marijuana from 17 to age 41 continuously. And both  
4 with the LSD and with the marijuana, he incurred legal  
5 problems. He has about four substance abuse arrests in his  
6 criminal record.

7 **Q.** Why does he meet the criteria for alcohol abuse?

8 **A.** I had less information about his alcohol intake. He  
9 certainly -- he -- there is information in the records that  
10 indicate that he drank heavily. And there was some  
11 descriptors of what that meant. And the heaviest drinking  
12 that I saw reported was a case of beer per night for three  
13 to four nights per week, which is heavy, heavy drinking.

14 I don't have any information, however, regarding  
15 his alcohol intake, if it was associated with symptoms of  
16 tolerance or withdrawal, which are the primary symptoms for  
17 alcohol dependence, so it's possible that he has alcohol  
18 dependence. I diagnosed alcohol abuse to be conservative.

19 **Q.** Do these various substance abuse diagnoses constitute a  
20 serious mental illness, abnormality or disorder?

21 **A.** Yes, they do.

22 **Q.** And are they serious for Mr. Carta?

23 **A.** Yes.

24 **Q.** And why is that?

25 **A.** That's because the use of substances, while it does not

1 cause a person to molest children or to engage in sexually  
2 violent behavior, it is not the primary cause, the  
3 paraphilia is the primary cause; but substances will  
4 disinhibit him. So if he's experiencing deviant sexual  
5 arousal, he is far more likely to act out on that if he is  
6 intoxicated and doesn't have a good judgment at the time.

7 **Q.** Now, the fifth diagnosis that you made of Mr. Carta was  
8 personality disorder with antisocial and borderline traits;  
9 is that correct?

10 **A.** Yes.

11 **Q.** And are there criteria for this diagnosis in the DSM?

12 **A.** Yes, there are.

13 **Q.** And if you'd turn to tab fifteen, are these the  
14 diagnostic criteria for both the personality disorders and  
15 also antisocial personality disorder and borderline  
16 personality disorder?

17 **A.** Yes.

18 **MS. BOAL:** Your Honor, I move into evidence  
19 Exhibit No. 15 which I understand there is no objection to.

20 **THE COURT:** No objection, it comes in.

21 **(Government's Exhibit No. 15 received in evidence.)**

22 BY MS. BOAL

23 **Q.** What are the criteria generally for antisocial  
24 personality disorder traits?

25 **A.** Right. Antisocial personality disorder is associated

1 with an individual who violates the rights of others. A  
2 person who engages in typical criminal behavior. A person  
3 who is, as a result of that behavior has been incarcerated  
4 or institutionalized. A person who lies to get their needs  
5 met. A person who is impulsive and acts out without  
6 thinking through the consequences of their behavior. A  
7 person who may engage in aggressiveness towards others,  
8 irritability, repeated physical fights, for example.

9 Someone who is irresponsible about their life  
10 responsibilities such as not sustaining gainful employment  
11 or work. And also a person who doesn't experience normal  
12 remorse, is not sorry for the hurt and harm that they have  
13 perpetrated on others.

14 **Q.** And for a diagnosis of antisocial personality disorder,  
15 does there also have to be a pattern of disregard for rights  
16 before the age of 15?

17 **A.** Yes, there has to be evidence of what we call conduct  
18 disorder which is like antisocial personality disorder for a  
19 child.

20 **Q.** And does Mr. Carta meet the diagnostic criteria for  
21 personality disorder with antisocial personality traits?

22 **A.** Indeed he does.

23 **Q.** And why is that?

24 **A.** Well, he has certainly evidence of conduct disorder.  
25 Looking at the records there was a description of him

1 engaging -- well, there is interviews with his mother, his  
2 sister and family members which have provided information  
3 about his development as well as other psychological reports  
4 that indicate that he had -- was a fire setter from about  
5 age seven. He set a number of things on fire including a  
6 bale of hay, a shack, a barn-type shack. He set a towel on  
7 fire in his sister's home.

8 So he was -- and he talked about himself getting an  
9 adrenaline rush when he started fires.

10 He was also at age 17 convicted of reckless  
11 burning. So this was a problem throughout his early  
12 childhood up until the time that he was about 17 or so.

13 And furthermore he had difficulties at school. He  
14 was -- at school he was truant from very early on. From  
15 six, he was suspended. He got into trouble at school. He  
16 was suspended in fifth grade.

17 In eighth grade he was suspended for truancy and  
18 probably five to ten times I saw in the records. So he was  
19 truant. He had suspensions for various reasons.

20 And in the seventh and eighth grade he was involved  
21 with a number of other boys who were delinquent and  
22 burglarizing homes and stealing things from other people.  
23 They would steal alcohol. They would steal marijuana. They  
24 would steal money. He talked about a number of juvenile  
25 arrests when he was younger.



1           So we see certainly evidence of conduct disorder  
2           and then many indications as an adult of antisocial  
3           behavior.

4           **Q.** And what are some of those indications?

5           **A.** Those would be twenty arrests and convictions, a  
6           relatively long rap sheet for him. Also very versatile  
7           criminal offending. So he has arrests and convictions for  
8           drug offenses, property offenses, sex offenses, non-sexual  
9           violence, arson. So he has a versatile criminal history.

10           He is a person who has not really maintained  
11           gainful employment. He's had a hundred jobs. They've been  
12           short term jobs. And there has been periods of time when he  
13           has been, significant periods of time when he has been  
14           unemployed.

15           He was irresponsible in terms of raising his  
16           daughter. He was given custody of his daughter when she was  
17           just a baby. His mother ended up raising the child. He  
18           talked about his irresponsibility in the records, of not  
19           providing adequate care for her.

20           This is a person who can really fly off the handle,  
21           become enraged, has threatened to kill his mother, his  
22           daughter and his daughter's boyfriend in retaliation for  
23           them not in some way to him meeting his needs. And they  
24           have been fearful for their lives as a result of that.

25           He has had a number of relationships that have

1 ended in retaliation that is very hurtful to the person with  
2 whom he was involved and humiliating to those people, which  
3 is antisocial in nature. For example, after he broke up  
4 with his girlfriend Brenda he put nude pictures of her in  
5 her brother's mailbox.

6 After he broke up with Frederick, the 17-year old  
7 boyfriend when he was in his forties, he put flyers with  
8 explicit embarrassing information about their sexual  
9 history, flyers on his front lawn, flyers in neighbors'  
10 mailboxes.

11 So he has a need to hurt people who he has cared  
12 about in the past.

13 And, furthermore, he, the years that he was  
14 traveling with the band the Grateful Dead he was selling  
15 drugs, LSD and marijuana. So these are all indices of his  
16 antisocial behavior.

17 **Q.** Is the antisocial personality disorder trait, is that a  
18 serious disorder?

19 **A.** Yes.

20 **Q.** And is it serious for Mr. Carta?

21 **A.** It is.

22 **Q.** And is that for all the reasons that you have just  
23 stated?

24 **A.** Yes, and it furthers his offending. His antisocial  
25 attitudes give him permission to violate the rights of

1 someone else such as a 13-year old with whom he wants to  
2 have sex.

3 Q. Now, there had been some mention that you had given a  
4 diagnosis of personality disorder NOS; is that correct?

5 A. Yes.

6 Q. Did you give a diagnosis of personality disorder NOS?

7 A. Yes, I provided a diagnosis of personality disorder not  
8 otherwise specified with antisocial and borderline traits.  
9 So I just described the two personality disorders I think he  
10 fits.

11 Q. And moving on to the borderline personality disorder  
12 traits, are there DSM-IV criteria for that?

13 A. Yes, there are.

14 Q. And are those in an exhibit that has been admitted into  
15 evidence, Exhibit No. 15?

16 A. Yes, they are.

17 Q. And what are the diagnostic criteria generally for  
18 borderline personality disorder traits?

19 A. Borderline personality disorder is characterized by  
20 severe problems within personal relationships and intimate  
21 relationships. It's an individual who experiences or  
22 exhibits frantic efforts to avoid being abandoned in  
23 relationships. So as long as the person stays with them,  
24 the relationship can stay in tact.

25 When the person tries to leave, the person becomes,

1 the individual becomes frantic and will do almost anything  
2 to try to get that person back, causing all kinds of  
3 problems and chaos and in this case revenge.

4 A person that has unstable interpersonal  
5 relationships, also an unstable view of themselves, a very  
6 poor self image, generally, a person who is prone to  
7 impulsivity, that would be things like reckless driving but  
8 certainly substance abuse, using drugs and alcohol, and as a  
9 result having very impulsive behavior.

10 Also a person whose moods fluctuate a great deal,  
11 go up, go down and are not well controlled. A person who  
12 feels kind of chronically like they have no sense of self,  
13 and also a person very prone to act out in anger, in  
14 particular if they feel abandoned.

15 **Q.** Does Mr. Carta meet the criteria for borderline  
16 personality disorder traits?

17 **A.** Yes, I believe he does.

18 **Q.** And why does he meet the criteria?

19 **A.** I think we see exactly what I described, an individual  
20 who wants to maintain a relationship desperately. And when  
21 they lose that relationship, he acts out in a variety of  
22 ways.

23 For example, he was married for eight months. His  
24 wife left him and his baby. And he, to get her back  
25 frantically and desperately to get her back, he attempted to

1 kill himself, took an overdose I believe of aspirin. Not to  
2 kill himself as he reported later but just to scare her, to  
3 try to get her back.

4 And furthermore he retaliated or acted out against  
5 his girlfriend, against his boyfriend Frederick in attempts  
6 to try to get these individual to come back to him.

7 He had a relationship with his daughter's boyfriend  
8 when they were living in his home. And he went to the  
9 extent to tell his daughter that he was having a sexual  
10 relationship with her boyfriend so that they would break up  
11 and Sean would come back and be with him.

12 So this is the type of behavior and relationships  
13 that's very typical of borderline personality disorder.  
14 He's acted quite impulsively of using drugs and alcohol  
15 repeatedly over his life.

16 And furthermore he is very prone to act out with  
17 anger. I talked about the retaliation to partners but also  
18 anger when someone doesn't meet his needs. When his -- he  
19 believes his parents destroyed property when he was  
20 incarcerated and that's when he threatened to kill his  
21 mother. He threatened to kill his daughter and others.

22 So he can become very, very enraged. This anger is  
23 quite typical of borderline personality disorder.

24 **Q.** Are borderline personality disorder traits serious?

25 **A.** Yes, they are.

1 Q. And is it a serious condition for Mr. Carta?

2 A. It is.

3 Q. And how, if at all, does Mr. Carta's personality  
4 diagnosis with antisocial and borderline personality traits  
5 affect his overall prognosis?

6 A. Well, I discussed how antisocial personality disorder  
7 affects his prognosis in that he feels he can violate the  
8 rights of others.

9 In terms of borderline personality disorder, this  
10 is a person who is desperate to develop relationships and  
11 try to keep them. And unfortunately there was one incident  
12 when he developed a relationship with a 13-year old when he  
13 was an adult. And he went so far as to keep this  
14 relationship in tact because this 13-year old was kind of  
15 wandering off from a relationship he -- an inappropriate  
16 obviously and illegal relationship that he wanted, that he  
17 took this child from California to Connecticut.

18 There were two police reports that documented this  
19 behavior. The parents were very upset that he had taken  
20 this child. So he'll go to any extent to maintain a  
21 relationship.

22 And we know that he has a history of highly  
23 inappropriate and illegal relationships.

24 Q. Did you consider any other diagnosis with respect to  
25 Mr. Carta?

1       **A.** I did.

2       **Q.** And what did you consider?

3       **A.** I considered a diagnosis of pedophilia.

4       **Q.** And why did you not diagnose him with pedophilia?

5       **A.** Well, pedophilia would be sexual arousal, fantasies,  
6       urges or behaviors toward prepubescent children. And I  
7       seriously considered whether he had pedophilia because, of  
8       course, the amount of pornography that he had from children  
9       aged 3 up to age 12 or 13.

10               And so any time you see an individual who has the  
11       possession of that much pornography or spending so much time  
12       with deviant arousal, in other words, fantasizing and  
13       masturbating to child pornography, I wonder, I have serious  
14       concerns that he also has sexual arousal to pre-pubescent  
15       children. And it's not unusual to have both sexually  
16       arousal to prepubescent children and children becoming  
17       pubescent and post-pubescent children.

18               However, to diagnose pedophilia, I would have to  
19       have, I would require behaviors that indicated he had acted  
20       out on that. So while he may have masturbated to that, had  
21       sexual fantasies of prepubescent children, I don't have any  
22       in this case admissions or any charges or convictions which  
23       would indicate he has acted out on prepubescent children.

24               **MS. BOAL:** Your Honor, I was going to move on to  
25       the third element. Is this a good time to break or --

1                   **THE COURT:** Well, I think it would because I do  
2 have to get to the doctor's office. And it will take me  
3 about this much time to get there so why don't we recess  
4 now.

5                   What time?

6                   **THE CLERK:** Ten o'clock.

7                   **THE COURT:** Ten o'clock tomorrow morning, all  
8 right.

9                   Thank you.

10                  **THE CLERK:** Court is in recess.

11                  (WHEREUPON, the proceedings were recessed at 4:00  
12 p.m.)

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C E R T I F I C A T E

I, Carol Lynn Scott, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/CAROL LYNN SCOTT

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